FEDERAL REGISTER

Vol. 76 Tuesday,

No. 229 November 29, 2011

Pages 73475–73992

OFFICE OF THE FEDERAL REGISTER

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DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 103, 207, 208, 211, 212, 213a, 244; 245, 324; 335

[CIS No. 2481–09; Docket No. USCIS–2009–0022]

RIN 1615–AB83

Immigration Benefits Business Transformation, Increment I; Correction

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Final rule; correction.

SUMMARY: The Department of Homeland Security (DHS) makes technical corrections to a final rule published in the **Federal Register** on August 29, 2011. The final rule amended DHS regulations to enable U.S. Citizenship and Immigration Services (USCIS) to transform its business processes. The final rule also finalized seven interim rules.

DATES: This final rule is effective November 28, 2011.

FOR FURTHER INFORMATION CONTACT: Dan Konnerth, Policy Chief, Office of Transformation Coordination, U.S. Citizenship and Immigration Services, Department of Homeland Security, 633 Third St. NW., Washington, DC 20529–2210; telephone (202) 233–2381.

SUPPLEMENTARY INFORMATION:

Need for Correction

On August 29, 2011, the Department of Homeland Security (DHS) issued a final rule that amended more than fifty parts of Title 8 of the Code of Federal Regulations and finalized seven interim rules. *Immigration Benefits Business Transformation, Increment I,* 76 FR 53764 (Aug. 29, 2011). The final rule removed form titles, number references, and position titles. The final rule also removed obsolete and expired regulatory provisions and corrected provisions that were affected by statutory changes.

DHS provided a 60-day public comment period and a 90-day effective date to provide the public with an opportunity to review the regulatory text and point out any errors made in the published final rule before it becomes effective. DHS has reviewed the public comments on the docket of this final rule and determined that several errors and omissions require correction. Specifically, through technical drafting oversights, DHS:

- Instructed the removal of the phrase ''petitions and applications'' instead of instructing the removal of the phrase ''applications or petitions'' and ''applications and petitions'' in 8 CFR 103.2;
- Omitted the substitution of ''benefit request'' for ''application or benefit'' in 8 CFR 103.2(b)(5);
- Incorrectly amended the second sentence of 8 CFR 103.2(b)(19) by removing the term ''petitioner'' and inserting ''beneficiary'';
- Omitted instructional text for reserving 8 CFR 103.20 through 103.36 after they are removed;
- Omitted the substitution of ''USCIS'' for the terms ''The USCIS'', ''the BCIS'', and ''The BCIS'' in 8 CFR 103.2;
- Omitted references to the title of the form required for accompanying or following-to-join derivatives of refugees in 8 CFR 207.7 and for admission of asylee spouses and children in 8 CFR 208.21;
- Omitted the substitution of ''Permanent Resident Card'' for ''permanent resident card'' in 8 CFR 211.5(c);
- Provided conflicting instructions affecting paragraph (b)(1) of 8 CFR 212.2;
- Incorrectly instructed that the heading for 8 CFR 212.7 be revised;
- Incorrectly instructed to revise terms in the second sentence of the introductory text of paragraph (m)(2) of 8 CFR 212.15;
- Omitted the term ''a'' from the amendatory text being revised in 8 CFR 213.2a;
- Incorrectly included the term ''in'' in the text being revised in 8 CFR 213.2a(c)(2)(i)(A);
- Omitted instructional text for revising the following terms in 8 CFR 213a.2:
  - The terms ''Form I–864 or I–864A'', ''a Form I–864 or I–864A'', ''Form I–864 and I–864A'' to read ''affidavit of support'';
  - The terms ''any Forms I–864A'' to read ''affidavit of support and any required attachments'';
  - The term ''any Form I–864A'' to read ''any affidavit of support or required attachment'';
  - The term ''Forms I–864'' to read ''affidavits of support'';
  - The term ''I–864A'' to read ''affidavit of support attachment''; and
  - The term ''A Form I–864'' to read ''An affidavit of support''.
- Omitted the term ''Form'' from the text being revised in 8 CFR 324.2;
- Omitted the term ''the'' from the text being revised in 8 CFR 244.7(b) and 8 CFR 244.14(a)(3);
- Provided conflicting instructions affecting 8 CFR 245.21(j); and
- Erroneously instructed to change the term ''district director'' to read ''USCIS'' and omitted instructions to revise the term ''the Service'' to read ''USCIS'' in 8 CFR 335.9.

Correction of Publication

Accordingly, the publication on August 29, 2011 (76 FR 53764) of the final rule that was the subject of FR Doc. 2011–20990 is corrected as follows:

PART 103—IMMIGRATION BENEFITS; BIOMETRIC REQUIREMENTS; AVAILABILITY OF RECORDS

Subpart A—Applying for Benefits, Surety Bonds, Fees

§ 103.2 [Corrected]

■ 1. On page 53780, second column, revise amendatory 8a. to read as follows:

''8 * * *

■ a. Removing the phrases ''applications and petitions'' and ''applications or petitions'' and adding in their place the term ''benefit requests''; removing the term ''an application or petition'' and adding in its place ''a benefit request''; removing the term ''application or petition'' and adding in its place ''benefit request''; and removing the terms ''the BCIS'', ''The BCIS'', and ''The USCIS'' and adding in their place the term ''USCIS'' as they appear in the following portions of the final rule:''.

■ 2. On page 53780, third column, amend amendatory instruction 8j. by adding at the end before the semicolon

''and revising the term ''application or benefit'' to read ''benefit request'' in the third sentence of paragraph (b)(5)''.

■ 3. On page 53780, third column, revise amendatory instruction 8k. to read as follows:

''8. * * *

■ k. Revising the term ''application, petition or document'' to read ''a benefit request'' in paragraph (b)(7);''

■ 4. On page 53781, first column, in paragraph (b)(19), remove the word ''beneficiary'' from the end of the paragraph and add ''petitioner'' in its place.

§ 103.7 [Corrected]

■ 5. On page 53781, second column, revise amendatory instruction 14a. to read as follows:

■ ''14. Revising the terms ''The BCIS'' and ''BCIS'' to read ''USCIS'' wherever that term appears in paragraph (a)(1);''.

§§ 103.20–103.36 [Corrected]

■ 6. On page 53782, second column, revise amendatory instruction 21 to read as follows:

■ ''21. Sections 103.20 through 103.36 are removed and reserved.''.

PART 207—ADMISSION OF REFUGEES

■ 7. On page 53783, third column, amendment 39, revise the amendatory language for the revisions to paragraphs (d) and (f) to read as follows:

§ 207.7 Derivatives of refugees.

* * * * *

(d) *Filing.* A refugee may request accompanying or following-to-join benefits for his or her spouse and unmarried, minor child(ren) (whether the spouse and children are inside or outside the United States) by filing a separate Request for Refugee/Asylee Relative in accordance with the form instructions for each qualifying family member. The request may only be filed by the principal refugee. Family members who derived their refugee status are not eligible to request derivative benefits on behalf of their spouse and child(ren). A separate Request for Refugee/Asylee Relative must be filed for each qualifying family member within two years of the refugee's admission to the United States unless USCIS determines that the filing period should be extended for humanitarian reasons. There is no time limit imposed on a family member's travel to the United States once the Request for Refugee/Asylee Relative has been approved, provided that the relationship of spouse or child continues to exist and approval of the Request for Refugee/Asylee Relative has not been subsequently revoked. There is no fee for this benefit request.

* * * * *

(f) *Approvals.* (1) *Spouse or child in the United States.* When a spouse or child of a refugee is in the United States and the Request for Refugee/Asylee Relative is approved, USCIS will notify the refugee of such approval. Employment will be authorized incident to status.

(2) *Spouse or child outside the United States.* When a spouse or child of a refugee is outside the United States and the Request for Refugee/Asylee Relative is approved, USCIS will notify the refugee of such approval. USCIS will send the approved request to the Department of State for transmission to the U.S. Embassy or Consulate having jurisdiction over the area in which the refugee's spouse or child is located.

(3) *Benefits.* The approval of the Request for Refugee/Asylee Relative will remain valid for the duration of the relationship to the refugee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Request for Refugee/Asylee Relative will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of a refugee. For a derivative inside or arriving in the United States, USCIS will issue a document reflecting the derivative's current status as a refugee to demonstrate employment authorization, or the derivative may apply, under 8 CFR 274a.12(a), for evidence of employment authorization.

* * * * *

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 8. On page 53784, third column, amendment 50, revise the amendatory language for paragraphs (c) and (d) to read as follows:

§ 208.21 Admission of the asylee's spouse and children.

* * * * *

(c) *Spouse or child in the United States.* When a spouse or child of an alien granted asylum is in the United States, but was not included in the asylee's benefit request, the asylee may request accompanying or following-to-join benefits for his or her spouse or child, by filing for each qualifying family member a Request for Refugee/Asylee Relative, with supporting evidence, and in accordance with the form instructions, regardless of the status of that spouse or child in the United States. A separate Request for Refugee/Asylee Relative must be filed by the asylee for each qualifying family member within two years of the date in which he or she was granted asylum status, unless it is determined by USCIS that this period should be extended for humanitarian reasons. Upon approval of the Request for Refugee/Asylee Relative, USCIS will notify the asylee of such approval. Employment will be authorized incident to status. To demonstrate employment authorization, USCIS will issue a document reflecting the derivative's current status as an asylee, or the derivative may apply, under 8 CFR 274a.12(a), for employment authorization. The approval of the Request for Refugee/Asylee Relative will remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Request for Refugee/Asylee Relative will cease to confer immigration benefits after it has been used by the beneficiary for admission to the United States as a derivative of an asylee.

(d) *Spouse or child outside the United States.* When a spouse or child of an alien granted asylum is outside the United States, the asylee may request accompanying or following-to-join benefits for his or her spouse or child(ren) by filing a separate Request for Refugee/Asylee Relative for each qualifying family member in accordance with the form instructions. A separate Request for Refugee/Asylee Relative for each qualifying family member must be filed within two years of the date in which the asylee was granted asylum, unless USCIS determines that the filing period should be extended for humanitarian reasons. When the Request for Refugee/Asylee Relative is approved, USCIS will notify the asylee of such approval. USCIS also will send the approved request to the Department of State for transmission to the U.S. Embassy or Consulate having jurisdiction over the area in which the asylee's spouse or child is located. The approval of the Request for Refugee/Asylee Relative will remain valid for the duration of the relationship to the asylee and, in the case of a child, while the child is under 21 years of age and unmarried, provided also that the principal's status has not been revoked. However, the approved Request for Refugee/Asylee Relative will cease to confer immigration benefits after it has been used by the beneficiary for

admission to the United States as a derivative of an asylee.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

§ 212.2 [Corrected]

■ 9. On page 53786, second column, remove amendment 64.a and redesignate 64b through f as 64a through e accordingly.

§ 212.7 [Corrected]

■ 10. On page 53787, first column, remove amendment 69.a. and redesignate 69b through m as 69a through l accordingly.

§ 212.15 [Corrected]

■ 11. On page 53788, first column, revise amendatory instruction 75h. to read as follows:

75. * * *

■ h. ''Revising the term ''Form I–905'' to read ''the request'' in paragraph (m)(2).''.

PART 213a—AFFIDAVITS OF SUPPORT ON BEHALF OF ALIENS

§ 213a.2 [Corrected]

■ 12. On page 53788, second column, revise amendatory instruction 80–82d. to read as follows:

''80–82 * * *

■ d. Revising the phrase ''the Form I–130 or Form I–600 immigrant visa petition (or the Form I–129F petition, for a K nonimmigrant seeking adjustment)'' to read ''a relative, orphan or fiancé(e) petition'' in the first sentence of paragraph (b)(1);''.

■ 13. On page 53788, second column, revise amendatory instruction 80–82e. to read as follows:

''80–82 * * *

■ e. Revising the phrase ''Form I–864P Poverty Guidelines'' to read ''the Poverty Guidelines'' in paragraph (c)(2)(i)(A);''.

■ 14. On page 53788, third column, revise the introductory text to amendatory instruction 80–82l. to read as follows:

''80–82 * * *

■ l. Section 213a.2 is further amended by revising the term ''Forms I–864'' to read ''affidavits of support'' and the term ''A Form I–864'' to read ''An affidavit of support'' and the terms ''Form I–864'' and ''the Form I–864'' to read ''an affidavit of support'' wherever those terms appear in the following places:''

■ 15. On page 53788, third column, amendment 80–82, add new instructions n. and o. to read as follows:

■ n. Section 213a.2 is further amended by revising the terms ''any Forms I–864A'' to read ''any affidavit of support attachments'' and the term ''any Form I–864A'' to read ''any affidavit of support attachment'' wherever those terms appear in paragraphs (a)(1)(ii), (iii), (iv), and (v).

■ o. Section 213a.2 is further amended by revising the term ''Form I–864 or I–864A'' to read ''affidavit of support and any required attachments''; the term ''I–864A'' to read ''affidavit of support attachment''; and the term ''a Form I–864 or I–864A'' to read ''an affidavit of support and any required attachments'' wherever those terms appear in the following places:

i. Paragraph (a)(1)(v)(A);

ii. Paragraph (c)(2)(v); and

iii. Paragraph (e)(2)(i)(D).''

PART 244—TEMPORARY PROTECTED STATUS FOR NATIONALS OF DESIGNATED STATES

§ 244.7 [Corrected]

■ 16. On pages 53791, third column, revise amendatory instruction 108.b. to read as follows:

''108. * * *

■ b. Revising the term ''the Attorney General'' to read ''DHS'' in paragraph (b);''

§ 244.14 [Corrected]

■ 17. On pages 53792, second column, revise amendatory instruction 113.d. to read as follows:

''113. * * *

■ d. Revising the term ''the Attorney General'' to read ''DHS'' in paragraph (a)(3);''.

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

§ 245.21 [Corrected]

■ 18. On page 53794, first column, amendment 129–130, remove instruction j. and redesignate instructions k. and l. as j. and k., respectively.

■ 19. On page 53794, first column, revise the introductory text to newly redesignated amendatory instruction 129–130k to read as follows:

''129–130. * * *

■ k. By revising the terms ''Service'', ''The Service'' and ''the Service'' to read ''USCIS'' and the term ''Service's'' to read ''USCIS's'' wherever the terms appear in the following paragraphs:''.

PART 324—SPECIAL CLASSES OF PERSONS WHO MAY BE NATURALIZED: WOMEN WHO HAVE LOST UNITED STATES CITIZENSHIP BY MARRIAGE AND FORMER CITIZENS WHOSE NATURALIZATION IS AUTHORIZED BY PRIVATE LAW

§ 324.2 [Corrected]

■ 20. On page 53800, first column, revise amendatory instruction 191 to read as follows:

■ ''191. In § 324.2, paragraph (b) is amended by revising the term ''Form N–400, as required by § 316.4 of this chapter'' to read ''the form designated by USCIS in accordance with the form instructions and with the fee prescribed in 8 CFR 103.7(b)(1) as required by 8 CFR 316.4''.''

PART 335—EXAMINATION ON APPLICATION FOR NATURALIZATION\

§ 335.9 [Corrected]

■ 21. On page 53801, third column, revise amendatory instruction 220.b. to read as follows:

''220. * * *

b. Revising the terms ''district director'', ''The district director'', ''the district director'', and ''the Service'' to read ''USCIS'' and the term ''Service's'' to read ''USCIS's''.''

Christina E. McDonald,

Associate General Counsel for Regulatory Affairs.

[FR Doc. 2011–30510 Filed 11–28–11; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0908; Directorate Identifier 2010–NM–251–AD; Amendment 39–16870; AD 2011–24–06]

RIN 2120–AA64

Airworthiness Directives; BAE SYSTEMS (Operations) Limited Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) that applies to all BAE SYSTEMS (Operations) Limited Model BAe 146–100A, –200A, and –300A airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes. This AD results from mandatory continuing

airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

* * * * *

* * * BAE Systems (Operations) Limited amended Chapter 05–10–15 of the AMM [aircraft maintenance manual] to introduce a new hydraulic filter assembly life limit and to remove the tables containing the Mandatory Life Limitations (Landings) on the Bolts and Pins as the information is now included in the SSID [supplemental structural inspection document] which is already mandated by the same AD. In addition, BAE Systems amended Chapter 05–10–15 of the AMM to enable the use of RJ85 MLG [main landing gear] main fittings for lighter weight 146–200 aircraft using the same safe life of 50,000 Flight Cycles (FC) and the use of RJ100 MLG main fittings for lighter weight RJ85, 146–200 and 146–300 aircraft using the same safe life of 40,000 FC.

* * * * *

The unsafe condition is fatigue cracking of certain structural elements which could adversely affect the structural integrity of these airplanes. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective January 3, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 3, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of June 25, 2010 (75 FR 28463, May 21, 2010).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; phone: (425) 227–1175; fax: (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 26, 2011 (76 FR 53348), and proposed to supersede AD 2010–10–22, Amendment 39–16301 (75 FR 28463, May 21, 2010). That NPRM proposed to correct an unsafe condition for the specified products.

Since we issued AD 2010–10–22, Amendment 39–16301 (75 FR 28463, May 21, 2010), we have determined that new life limits on certain MLG components are necessary. The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0166, dated August 6, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

The BAe 146/AVRO 146–RJ Aircraft Maintenance Manual (AMM) includes chapters 05–10 ''Time Limits'', 05–15 ''Critical Design Configuration Control Limitations (CDCCL)—Fuel System Description and Operation'' and 05–20 ''Scheduled Maintenance Checks'', some sub-chapters of which have been identified as requirements for continued airworthiness and [EASA] AD 2009–0215 [which corresponds to FAA AD 2010–10–22, Amendment 39–16301 (75 FR 28463, May 21, 2010)] was issued to require operators to comply with those instructions.

Since the issuance of that AD [2009–0215], BAE Systems (Operations) Limited has amended the AMM to remove the life limits on shock absorber assemblies, but not the individual shock absorber components, and amend the life limits on the different standards of Main Landing Gear (MLG) Up-Locks and MLG Door Up-Locks in sub-chapter 05–10–15. In addition BAE Systems has amended Chapter 05–10–15 of the AMM to introduce and amend life limits on MLG components.

For the reasons described above, this [EASA] AD amends the requirements of AD 2009–0215, which is superseded, and requires the implementation of the instructions, limitations, inspections and corrective measures as specified in the defined parts of Chapter 05 of the AMM at Revision 100.

The unsafe condition is fatigue cracking of certain structural elements which could adversely affect the structural integrity of these airplanes. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (76 FR 53348, August 26, 2011) or on the determination of the cost to the public.

Changes to the AD

Since we issued the NPRM (76 FR 53348, August 26, 2011), we have reviewed EASA AD 2011–0048, dated March 18, 2011, which supersedes EASA AD 2010–0166, dated August 6, 2010, and has no substantive changes. The actions required by this AD correspond with the actions specified in EASA AD 2011–0048, dated March 18, 2011. We have revised the Summary and paragraphs (e) and (m) of this AD to refer to EASA AD 2011–0048, dated March 18, 2011. No other changes have been made to this AD.

Conclusion

We reviewed the available data and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a **NOTE** within the AD.

Costs of Compliance

We estimate that this AD will affect about 2 products of U.S. registry.

The actions that are required by AD 2010–10–22, Amendment 39–16301 (75 FR 28463, May 21, 2010) and retained in this AD take about 2 work-hours per product, at an average labor rate of $85 per work-hour. Required parts cost about $0 per product. Based on these figures, the estimated cost of the currently required actions is $170 per product.

We estimate that it will take about 1 work-hour per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $170, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more

detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 53348, August 26, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–16301 (75 FR 28463, May 21, 2010) and adding the following new AD:

2011–24–06 BAE SYSTEMS (Operations) Limited: Amendment 39–16870. Docket No. FAA–2011–0908; Directorate Identifier 2010–NM–251–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 3, 2012.

Affected ADs

(b) This AD supersedes AD 2010–10–22, Amendment 39–16301 (75 FR 28463, May 21, 2010).

Applicability

(c) This AD applies to all BAE SYSTEMS (OPERATIONS) LIMITED Model BAe 146–100A, –200A, and –300A airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections) and/or Critical Design Configuration Control Limitations (CDCCLs). Compliance with these actions and/or CDCCLs is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation to comply with 14 CFR 91.403(c), the operator must request approval of an alternative method of compliance (AMOC) according to paragraph (l)(1) of this AD. The request should include a description of changes to the required actions that will ensure the continued operational safety of the airplane.

Subject

(d) Air Transport Association (ATA) of America Code 05.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

* * * * *

* * * BAE Systems (Operations) Limited amended Chapter 05–10–15 of the AMM [aircraft maintenance manual] to introduce a new hydraulic filter assembly life limit and to remove the tables containing the Mandatory Life Limitations (Landings) on the Bolts and Pins as the information is now included in the SSID [Supplemental Structural Inspection Document] which is already mandated by the same AD. In addition, BAE Systems amended Chapter 05–10–15 of the AMM to enable the use of RJ85 MLG [main landing gear] main fittings for lighter weight 146–200 aircraft using the same safe life of 50,000 Flight Cycles (FC) and the use of RJ100 MLG main fittings for lighter weight RJ85, 146–200 and 146–300 aircraft using the same safe life of 40,000 FC.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Certain Requirements of AD 2010–10–22, Amendment 39–16301 (75 FR 28463, May 21, 2010)

New Airworthiness Limitations Revisions

(g) Within 90 days after June 25, 2010 (the effective date of AD 2010–10–22, Amendment 39–16301 (75 FR 28463, May 21, 2010)), revise the maintenance program, by incorporating Chapter 5 of the BAE SYSTEMS (Operations) Limited BAe146 Series/Avro 146–RJ Series AMM to incorporate new and more restrictive life limits for certain items and new and more restrictive inspections to detect fatigue cracking in certain structures, and to add fuel system critical design configuration control limitations (CDCCLs) to prevent ignition sources in the fuel tanks, in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA) (or its delegated agent).

Note 2:

Guidance on revising Chapter 5 of the BAE SYSTEMS (Operations) Limited BAe146 Series/Avro 146–RJ Series AMM, Revision 97, dated July 15, 2009, can be found in the applicable sub-chapters listed in Table 1 of this AD.

TABLE 1—APPLICABLE AMM SUB-CHAPTERS

AMM Sub-chapter	Subject
05–10–01	Airframe Airworthiness Limitations before Life Extension Programme.
05–10–05 [1]	Airframe Airworthiness Limitations, Life Extension Programme Landings Life Extended.
05–10–10 [2]	Airframe Airworthiness Limitations, Life Extension Programme Calendar Life Extended.
05–10–15	Aircraft Equipment Airworthiness Limitations.

TABLE 1—APPLICABLE AMM SUB-CHAPTERS—Continued

AMM Sub-chapter	Subject
05–10–17	Power Plant Airworthiness Limitations.
05–15–00	Critical Design Configuration Control Limitations (CDCCL)—Fuel System Description and Operation.
05–20–00 [3]	Scheduled Maintenance.
05–20–01	Airframe Scheduled Maintenance—Before Life Extension Programme.
05–20–05 [1]	Airframe Scheduled Maintenance—Life Extension Programme Landings Life Extended.
05–20–10 [2]	Airframe Scheduled Maintenance—Life Extension Programme Calendar Life Extended.
05–20–15	Aircraft Equipment Scheduled Maintenance.

[1] Applicable only to airplanes post-modification HCM20011A or HCM20012A or HCM20013A.
[2] Applicable only to airplanes post-modification HCM20010A.
[3] Paragraphs 5 and 6 only, on the Corrosion Prevention and Control Program (CPCP) and the Supplemental Structural Inspection Document (SSID).

Note 3: Sub-chapter 05–15–00 of the BAE SYSTEMS (Operations) Limited BAe146 Series/Avro 146–RJ Series AMM, is the CDCCL.

Note 4: Within Sub-chapter 05–20–00 of the BAE SYSTEMS (Operations) Limited BAe146 Series/Avro 146–RJ Series AMM, the relevant issues of the support documents are as follows: BAE SYSTEMS (Operations) Limited BAe 146 Series/Avro 146–RJ Corrosion Prevention and Control Program Document CPCP–146–01, Revision 3, dated July 15, 2008, including BAE SYSTEMS (Operations) Limited Temporary Revision (TR) 2.1, dated December 2008; and BAE SYSTEMS (Operations) Limited BAe146 Series Supplemental Structural Inspection Document SSID–146–01, Revision 1, dated June 15, 2009.

Note 5: Within Sub-chapter 05–20–01 of the BAE SYSTEMS (Operations) Limited BAe146 Series/Avro146–RJ Series AMM, the relevant issue of BAE SYSTEMS (Operations) Limited BAe 146/Avro 146–RJ Maintenance Review Board Report Document MRB 146–01, Issue 2, is Revision 15, dated March 2009 (mis-identified in EASA AD 2009–0215, dated October 7, 2009, as being dated May 2009).

Note 6: Notwithstanding any other maintenance or operational requirements, components that have been identified as airworthy or installed on the affected airplanes before revision of Chapter 5 of the AMM, as required by paragraph (g) of this AD, do not need to be reworked in accordance with the CDCCLs. However, once the ALS or AMM has been revised, future maintenance actions on these components must be done in accordance with the CDCCLs.

(h) Except as specified in paragraphs (i) and (j) of this AD: After the actions specified in paragraph (g) of this AD have been accomplished, no alternative inspections or inspection intervals may be approved for the structural elements specified in the documents listed in paragraph (g) of this AD.

(i) Modifying the main fittings of the main landing gear in accordance with Messier-Dowty Service Bulletin 146–32–171, dated August 11, 2009, extends the safe limit of the main landing gear main fitting from 32,000 landings to 50,000 landings on the main fitting.

New Requirements of This AD

New Airworthiness Limitations Revisions

(j) Within 90 days after the effective date of this AD, revise the maintenance program, by incorporating Subject 05–10–15, ''Aircraft Equipment Airworthiness Limitations'' of Chapter 05, ''Time Limits/Maintenance Checks,'' of the BAE SYSTEMS (Operations) Limited BAe 146 Series/Avro 146–RJ Series AMM, Revision 104, dated April 15, 2011, to remove life limits on shock absorber assemblies, but not the individual shock absorber components, amend life limits on MLG up-locks and door up-locks, and to introduce and amend life limits on MLG components. Incorporating the new life limits and inspections into the maintenance program terminates the requirements of paragraph (g) of this AD for Subject 05–10–15, ''Aircraft Equipment Airworthiness Limitations'' of Chapter 05, ''Time Limits/Maintenance Checks,'' of the BAE SYSTEMS (Operations) Limited BAe 146 Series/Avro 146–RJ Series AMM, Revision 104, dated April 15, 2011, and after incorporation has been done, the limitations required by paragraph (g) of this AD for Subject 05–10–15, ''Aircraft Equipment Airworthiness Limitations'' of Chapter 05, ''Time Limits/Maintenance Checks,'' of the BAE SYSTEMS (Operations) Limited BAe 146 Series/Avro 146–RJ Series AMM, Revision 104, dated April 15, 2011, may be removed from the maintenance program.

No Alternative Actions, Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs)

(k) After accomplishing the revision required by paragraph (j) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used, unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (l)(1) of this AD.

FAA AD Differences

Note 7: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(l) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(m) Refer to MCAI EASA Airworthiness Directive 2011–0048, dated March 18, 2011; Subject 05–10–15, ''Aircraft Equipment Airworthiness Limitations,'' of Chapter 05, ''Time Limits/Maintenance Checks,'' of the BAE SYSTEMS (Operations) Limited BAe 146 Series/Avro 146–RJ Series AMM, Revision 104, dated April 15, 2011; and Messier-Dowty Service Bulletin 146–32–171, dated August 11, 2009; for related information.

Material Incorporated by Reference

(n) You must use Subject 05–10–15, ''Aircraft Equipment Airworthiness Limitations,'' of Chapter 05, ''Time Limits/Maintenance Checks,'' of the BAE SYSTEMS (Operations) Limited BAe 146 Series/Avro 146–RJ Series Aircraft Maintenance Manual (AMM), Revision 104, dated April 15, 2011, to do the applicable actions required by this AD, unless the AD specifies otherwise. If you do the optional modification specified in this AD, you must use Messier-Dowty Service Bulletin 146–32–171, dated August 11, 2009, to do those actions, unless the AD specifies

otherwise. Only the transmittal letter and Chapter 05 List of Effective Pages contain the date of Revision 104 of the BAE Systems (Operations) Limited BAe 146 Series/Avro 146–RJ Series AMM.

(1) The Director of the Federal Register approved the incorporation by reference of Subject 05–10–15, ''Aircraft Equipment Airworthiness Limitations,'' of Chapter 05, ''Time Limits/Maintenance Checks,'' of the BAE SYSTEMS (Operations) Limited BAe 146 Series/Avro 146–RJ Series AMM, Revision 104, dated April 15, 2011, under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Messier-Dowty Service Bulletin 146–32–171, dated August 11, 2009, on June 25, 2010 (75 FR 28463, May 21, 2010).

(3) For BAE Systems (Operations) Limited service information identified in this AD, contact BAE Systems (Operations) Limited, Customer Information Department, Prestwick International Airport, Ayrshire, KA9 2RW, Scotland, United Kingdom; telephone +44 1292 675207; fax +44 1292 675704; email *RApublications@baesystems.com;* Internet *http://www.baesystems.com/Businesses/RegionalAircraft/index.htm.*

(4) For Messier-Dowty service information identified in this AD, contact Messier-Dowty: Messier Services Americas, Customer Support Center, 45360 Severn Way, Sterling, Virginia 20166–8910; telephone (703) 450–8233; fax (703) 404–1621; Internet *https://techpubs.services/messier-dowty.com.*

(5) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

(6) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 8, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–29804 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0720; Directorate Identifier 2010–NM–252–AD; Amendment 39–16867; AD 2011–24–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–400 series airplanes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

There has been one reported incident where the main landing gear (MLG) failed to extend during testing of the MLG alternate release system. Investigation revealed that the door release lever bushing was worn, causing an increase in the lateral movement of the release cable system. An increase in free-play within the release cable system would cause additional wear to the door release lever bushing and may lead to the turnbuckle fouling against the nacelle frame. The bushing wear at the door release lever and turnbuckle fouling could cause a failure in the alternate release system, preventing the landing gear from extending in the case of a failure of the normal MLG extension/retraction system.

* * * * *

The unsafe condition is loss of control during landing. We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective January 3, 2012.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 3, 2012.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Fabio Buttitta, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7303; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on August 1, 2011 (76 FR 45713). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

There has been one reported incident where the main landing gear (MLG) failed to extend during testing of the MLG alternate release system. Investigation revealed that the door release lever bushing was worn, causing an increase in the lateral movement of the release cable system. An increase in free-play within the release cable system would cause additional wear to the door release lever bushing and may lead to the turnbuckle fouling against the nacelle frame. The bushing wear at the door release lever and turnbuckle fouling could cause a failure in the alternate release system, preventing the landing gear from extending in the case of a failure of the normal MLG extension/retraction system.

This [Transport Canada Civil Aviation] directive is to mandate the incorporation of a new maintenance task to prevent excessive free-play of the turnbuckle and cable within the alternate release system.

The unsafe condition is loss of control during landing. You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the comment received.

Request To Refer to Revision Incorporating Temporary Revision

Horizon Air Industries, Inc. (the commenter) requested that we revise paragraph (g) of the NPRM (76 FR 45713, August 1, 2011) to reference Revision 7, dated June 5, 2010, of the Bombardier Q400 Dash 8 Maintenance Requirements Manual (MRM), PSM 1–84–7, instead of Bombardier Temporary Revision (TR) MRB–46, dated February 4, 2010, to Section 1–32, Systems/Powerplant Maintenance Program, of the Maintenance Review Board (MRB) Report Part 1, of the Bombardier Q400 Dash 8 MRM, PSM 1–84–7. The commenter explained that this TR was removed from this MRM by Revision 7 of this MRM; therefore, this TR does not exist. The commenter reasoned that referencing Bombardier TR MRB–46 in the final rule will force operators to request an alternative method of

compliance to use Revision 7 of this MRM, because this TR is no longer included in this MRM. The commenter suggested that, if the AD must reference the same document as Canadian AD CF–2010–26, dated August 17, 2010, then a paragraph needs to be added to the final rule allowing operators to remove this TR once it is incorporated into the manual by the general revision.

We agree that operators should be allowed to remove Bombardier TR MRB–46 once it is included in the general revision of the Bombardier MRM. Therefore, we have revised this final rule to add a note following paragraph (g) of this final rule to allow operators to remove Bombardier TR MRB–46, dated February 4, 2010, once it has been included in the general revisions of the Bombardier Q400 Dash 8 MRM. We have revised the final rule and re-identified subsequent notes accordingly.

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a NOTE within the AD.

Costs of Compliance

We estimate that this AD will affect 65 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $5,525, or $85 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 45713, August 1, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011–24–03 Bombardier, Inc.: Amendment 39–16867. Docket No. FAA–2011–0720; Directorate Identifier 2010–NM–252–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 3, 2012.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Bombardier, Inc. Model DHC–8–400, –401, and –402 airplanes, certificated in any category, having serial numbers 4001 and subsequent.

Subject

(d) Air Transport Association (ATA) of America Code 32: Landing Gear.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

There has been one reported incident where the main landing gear (MLG) failed to extend during testing of the MLG alternate release system. Investigation revealed that the door release lever bushing was worn, causing an increase in the lateral movement of the release cable system. An increase in free-play within the release cable system would cause additional wear to the door release lever bushing and may lead to the turnbuckle fouling against the nacelle frame. The bushing wear at the door release lever and turnbuckle fouling could cause a failure in the alternate release system, preventing the landing gear from extending in the case of a failure of the normal MLG extension/retraction system.

* * * * *

The unsafe condition is loss of control during landing.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 30 days after the effective date of this AD, revise the maintenance program by incorporating Task 323400–203 specified in Bombardier Temporary Revision (TR) MRB–46, dated February 4, 2010, to Section 1–32, Systems/Powerplant Maintenance

Program, of the Maintenance Review Board (MRB) Report Part 1, of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. The initial compliance time for the actions specified in Bombardier TR MRB–46, dated February 4, 2010, is within 6,000 flight hours after the effective date of this AD. Thereafter, operate the airplane according to the procedures and compliance times in Bombardier TR MRB–46, dated February 4, 2010.

Note 1: The revision required by paragraph (g) of this AD may be done by inserting a copy of Bombardier TR MRB–46, dated February 4, 2010, into Section 1–32, Systems/Powerplant Maintenance Program, of the Maintenance Review Board (MRB) Report Part 1, of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7. When Bombardier TR MRB–46, dated February 4, 2010, has been included in general revision of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, the Bombardier Q400 Dash 8 Maintenance Requirements Manual may be removed from Bombardier TR MRB–46, dated February 4, 2010, provided that the relevant information in the general revision is identical to that in Bombardier TR MRB–46, dated February 4, 2010.

No Alternative Actions, Intervals, and/or Critical Design Configuration Control Limitations (CDCCLs)

(h) After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections), intervals, and/or CDCCLs may be used unless the actions, intervals, and/or CDCCLs are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (i) of this AD.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(i) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to *ATTN:* Program Manager, Continuing Operational Safety, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone (516) 228–7300; fax (516) 794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(j) Refer to MCAI Canadian Airworthiness Directive CF–2010–26, dated August 17, 2010; and Bombardier Temporary Revision MRB–46, dated February 4, 2010, to Section 1–32, Systems/Powerplant Maintenance Program, of the Maintenance Review Board Report Part 1, of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7; for related information.

Material Incorporated by Reference

(k) You must use Bombardier Temporary Revision MRB–46, dated February 4, 2010, to Section 1–32, Systems/Powerplant Maintenance Program, of the Maintenance Review Board Report Part 1, of the Bombardier Q400 Dash 8 Maintenance Requirements Manual, PSM 1–84–7, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone (416) 375–4000; fax (416) 375–4539; email *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com.*

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 8, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–29805 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0572; Directorate Identifier 2011–NM–009–AD; Amendment 39–16866; AD 2011–24–02]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Model GV and GV–SP Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Gulfstream Aerospace Corporation Model GV and GV–SP airplanes. This AD was prompted by notification from the airplane manufacturer that the third fire extinguisher bottle is mounted in a small-fragment impact zone. This AD requires inspecting to determine whether a third Halon fire extinguisher bottle is installed in the auxiliary power unit (APU) fragment impact zone, revising the limitations section of the airplane flight manual to add restrictions for APU usage for certain airplanes having a third fire extinguisher bottle, and removing the third fire extinguisher bottle from certain airplanes. We are issuing this AD to prevent penetration of the bottle by fragments released due to a failure of the APU rotor system. The bottle could rupture and cause substantial damage to primary airframe structure and primary flight controls.

DATES: This AD is effective January 3, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 3, 2012.

ADDRESSES: For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206; telephone (800) 810–4853; fax (912) 965–3520; email *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://*

www.regulations.gov; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: (800) 647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Sanford Proveaux, Aerospace Engineer, Continued Operational Safety and Certificate Management Branch, ACE–102A, FAA, Atlanta Aircraft Certification Office (ACO) 1701 Columbia Avenue, College Park, Georgia 30337; *phone:* (404) 474–5566; *fax:* (404) 474–5606; email: *sanford.proveaux@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on June 22, 2011 (76 FR 36392). That NPRM proposed to require inspecting to determine whether a third Halon fire extinguisher bottle is installed in the auxiliary power unit (APU) fragment impact zone, revising the limitations section of the airplane flight manual to add restrictions for APU usage for certain airplanes having a third fire extinguisher bottle, and removing the third fire extinguisher bottle from certain airplanes.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and the FAA's response to each comment.

Request To Include an Optional Terminating Action

Gulfstream Aerospace Corporation (Gulfstream) requested that we revise the NPRM (76 FR 36392, June 22, 2011) to include an option for terminating action by incorporation of the amended supplemental type certificate (STC) ST01822AT–D, dated July 31, 2011. Gulfstream explained that the amended STC relocates the third halon fire extinguisher, and that Gulfstream could provide details of the amended STC as required to support the wording in the final rule. Gulfstream expressed that there is no need for a compliance time associated with their proposed terminating action since the interim actions ''(APU operating limitation and AFM [airplane flight manual] revision)'' will be in place as required by the NPRM.

We disagree with the request to revise the final rule to include an option for terminating action by incorporating the amended STC ST01822AT–D, dated July 31, 2011. The Gulfstream documents required (customer service bulletins and aircraft change instructions) for this action are not yet available. However, under the provisions of paragraph (l) of this final rule, we will consider requests for approval of an option for a terminating action as an alternative method of compliance if sufficient data are submitted to substantiate that the new action would provide an acceptable level of safety. We have not changed the AD in this regard.

Request for Clarification of Cost Analysis

Gulfstream also indicated that the cost analysis for the inspection action is based on 1,000 airplanes whereas the AFM revision action is based on 70 airplanes, and that the bottle removal action is based on about 30 airplanes.

We infer that Gulfstream is requesting clarification on why 1,000 airplanes are inspected, but the on-condition action only applies to certain airplanes. All airplanes must be inspected to determine if they have the third fire extinguisher bottle and to determine if it is a spare. Gulfstream's indication that the AFM revision action is based on 70 airplanes, and that the bottle removal action is based on about 30 airplanes, is only an estimate. We have not changed the AD in this regard.

Conclusion

We reviewed the relevant data, considered the comment received, and determined that air safety and the public interest require adopting the AD as proposed—except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (76 FR 36392, June 22, 2011) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Interim Action

We consider this AD interim action. The manufacturer is currently developing a modification that will address the unsafe condition identified in this AD. Once this modification is developed, approved, and available, we might consider additional rulemaking.

Costs of Compliance

We estimate that this AD affects 1,000 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	1 work-hour × $85 per hour = $85	$0	$85	$85,000

We estimate the following costs to do any necessary actions that would be required based on the results of the inspection.

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
AFM revision	1 work-hour × $85 per hour = $85	$0	$85 (about 70 GV/GV–SP airplanes).
Bottle removal	1 work-hour × $85 per hour = $85	0	$85 (about 30 GV–SP airplanes).

According to the manufacturer, some of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2011–24–02 Gulfstream Aerospace Corporation: Amendment 39–16866; Docket No. FAA–2011–0572; Directorate Identifier 2011–NM–009–AD.

(a) Effective Date

This AD is effective January 3, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Gulfstream Aerospace Corporation airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Model GV airplanes having serial numbers (S/Ns) 501 and subsequent.

(2) Model GV–SP airplanes having S/Ns 5001 through 5308 inclusive.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 2621, Fire bottle, fixed.

(e) Unsafe Condition

This AD was prompted by notification from the airplane manufacturer that the third fire extinguisher bottle is mounted in a small-fragment impact zone. We are issuing this AD to prevent penetration of the bottle by fragments released due to a failure of the auxiliary power unit (APU) rotor system. The bottle could rupture and cause substantial damage to primary airframe structure and primary flight controls.

(f) Compliance

Comply with this AD within the compliance times specified, unless already done.

(g) Inspection

For all airplanes: Within 21 days after the effective date of this AD, or before removing the APU flight restrictions required by AD 2009–17–01, Amendment 39–15991 (74 FR 40061, August 11, 2009), whichever occurs first, inspect to determine whether a third Halon fire extinguisher bottle for engines is installed in the APU fragment impact zone (rotor fragment impact zone), in accordance with the Accomplishment Instructions of the applicable Gulfstream alert customer bulletin identified in table 1 of this AD.

TABLE 1—APPLICABLE GULFSTREAM ALERT CUSTOMER BULLETINS

For model—	Use—	Which includes—	To the—
GV airplanes	Gulfstream V Alert Customer Bulletin 30A, dated December 20, 2010.	Gulfstream GV/GV–SP Airplane Flight Manual (AFM) Supplement CE51 628M001, Revision A, dated December 20, 2010.	Gulfstream GV AFM.
GV–SP (G500) airplanes.	Gulfstream G500 Alert Customer Bulletin 10A, dated December 20, 2010.	Gulfstream GV/GV–SP AFM Supplement CE51 628M001, Revision A, dated December 20, 2010.	Gulfstream GV–SP AFM.
GV–SP (G550) airplanes.	Gulfstream G550 Alert Customer Bulletin 10A, dated December 20, 2010.	Gulfstream GV/GV–SP AFM Supplement CE51 628M001, Revision A, dated December 20, 2010.	Gulfstream GV–SP AFM.

(1) If the third fire extinguisher bottle is not installed, no further work is required by this paragraph.

(2) For Model GV airplanes in which the third fire extinguisher bottle is installed as a dedicated APU fire bottle configuration, as defined in Gulfstream V Alert Customer Bulletin 30A, dated December 20, 2010 (as a functioning part of the aircraft fire suppression system): Before further flight, revise the Limitations section of the Gulfstream GV AFM to include the information in Gulfstream GV/GV–SP AFM Supplement CE51 628M001, Revision A, dated December 20, 2010 (which is included in Gulfstream V Alert Customer Bulletin 30A, dated December 20, 2010). This AFM supplement adds restrictions for APU usage. Operate the airplane thereafter according to the limitations in this AFM supplement.

Note 1: This may be done by inserting a copy of Gulfstream GV/GV–SP AFM Supplement CE51 628M001, Revision A, dated December 20, 2010, in the applicable AFM. When information in this AFM supplement has been included in general revisions of the applicable AFM, the general revisions may be inserted in the applicable AFM, provided the relevant information in the general revision is identical to that in Gulfstream GV/GV–SP AFM Supplement CE51 628M001, Revision A, dated December 20, 2010, and that AFM supplement may be removed.

(3) For Model GV and GV–SP airplanes in which the third fire extinguisher bottle is installed as a spare fire bottle configuration (not connected to the airplane's electrical or fire suppression system), as defined in the

applicable Gulfstream alert customer bulletin identified in table 1 of this AD: Do the actions required by paragraph (g)(3)(i) or (g)(3)(ii) of this AD.

(i) Before further flight, remove the bottle, in accordance with the Accomplishment Instructions of the applicable Gulfstream alert customer bulletin identified in table 1 of this AD.

(ii) Before further flight, revise the limitations section of the applicable Gulfstream AFM specified in table 1 of this AD to include the information in Gulfstream GV/GV–SP AFM Supplement CE51 628M001, Revision A, dated December 20, 2010. This AFM supplement adds restrictions for APU usage. Operate the airplane thereafter according to the limitations in that AFM supplement.

Note 2: This may be done by inserting a copy of Gulfstream GV/GV–SP AFM Supplement CE51 628M001, Revision A, dated December 20, 2010, in the applicable AFM. When information in this AFM supplement has been included in general revisions of the applicable AFM, the general revisions may be inserted in the applicable AFM, provided the relevant information in the general revision is identical to that in Gulfstream GV/GV–SP AFM Supplement CE51 628M001, Revision A, dated December 20, 2010, and that AFM supplement may be removed.

(h) Credit for Actions Accomplished in Accordance With Previous Service Information

Actions accomplished before the effective date of this AD in accordance with Gulfstream V Alert Customer Bulletin 30, dated December 6, 2010, including Gulfstream GV/GV–SP AFM Supplement CE51 628M001, dated November 18, 2010 (for Model GV airplanes); Gulfstream G550 Alert Customer Bulletin 10, dated December 6, 2010, including Gulfstream GV/GV–SP AFM Supplement CE51 628M001, dated November 18, 2010 (for Model GV airplanes); or G500 Alert Customer Bulletin 10, dated December 6, 2010, including Gulfstream GV/GV–SP AFM Supplement CE51 628M001, dated November 18, 2010 (for Model GV airplanes), are acceptable for compliance with the corresponding actions required by paragraph (g) of this AD.

(i) Parts Installation

As of the effective date of this AD, no person may install a third fire extinguisher bottle in the APU fragment impact zone (rotor fragment impact zone) of any airplane.

(j) No Reporting

Although the service information specified in paragraphs (j)(1), (j)(2), and (j)(3) of this AD specify to submit certain information to the manufacturer, this AD does not include that requirement.

(1) Gulfstream V Alert Customer Bulletin 30A, dated December 20, 2010, including Gulfstream GV/GV–SP AFM Supplement CE51 628M001, Revision A, dated December 20, 2010, (for Model GV airplanes).

(2) Gulfstream G500 Alert Customer Bulletin 10A, dated December 20, 2010, including Gulfstream GV/GV–SP AFM Supplement CE51 628M001, Revision A, dated December 20, 2010, (for Model GV–SP (G500) airplanes).

(3) Gulfstream G550 Alert Customer Bulletin 10A, dated December 20, 2010, including Gulfstream GV/GV–SP AFM Supplement CE51 628M001, Revision A, dated December 20, 2010, (for Model GV–SP (G550) airplanes).

(k) Special Flight Permit

Special flight permits, as described in Section 21.197 and Section 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199), may be issued to operate the airplane to a location where the requirements of this AD can be accomplished, provided the following conditions are met:

(1) If an airplane is grounded due to a single generator failure, the APU may be operated during a ferry flight, provided no passengers are carried.

(2) Only the minimum required flight-crew is allowed on any ferry flight.

(l) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD.

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(m) Related Information

For more information about this AD, contact Sanford Proveaux, Aerospace Engineer, Continued Operational Safety and Certificate Management Branch, ACE–102A, FAA, Atlanta Aircraft Certification Office (ACO), 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 474–5566; fax (404) 474–5606; email: *sanford.proveaux@faa.gov.*

(n) Material Incorporated by Reference

(1) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(2) Gulfstream G500 Alert Customer Bulletin 10A, dated December 20, 2010, including Gulfstream GV/GV–SP airplane flight manual (AFM) Supplement CE51 628M001, Revision A, dated December 20, 2010, approved for IBR January 3, 2012.

(3) Gulfstream G550 Alert Customer Bulletin 10A, dated December 20, 2010, including Gulfstream GV/GV–SP AFM Supplement CE51 628M001, Revision A, dated December 20, 2010, approved for IBR January 3, 2012.

(4) Gulfstream V Alert Customer Bulletin 30A, dated December 20, 2010, including Gulfstream GV/GV–SP AFM Supplement CE51 628M001, Revision A, dated December 20, 2010, approved for IBR January 3, 2012.

(5) For service information identified in this AD, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, Georgia 31402–2206; telephone (800) 810–4853; fax (912) 965–3520; e-mail *pubs@gulfstream.com;* Internet *http://www.gulfstream.com/product_support/technical_pubs/pubs/index.htm.* You may review copies of the referenced service information at the FAA.

(6) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

(7) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 8, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–29806 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1232; Directorate Identifier 2011–NM–039–AD; Amendment 39–16873; AD 2011–24–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A340–200 and -300 series airplanes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

[T]he FAA published SFAR 88 (Special Federal Aviation Regulation 88) [(66 FR 23086, May 7, 2001)].

By mail referenced 04/00/02/07/01–L296 of March 4th, 2002 and 04/00/02/07/03–L024 of February 3rd, 2003 the JAA [Joint Aviation Authorities] recommended to the National Aviation Authorities (NAA) the application of a similar regulation.

The aim of this [EASA] regulation is to require * * * a definition review against explosion hazards.

* * * * *

This AD requires inspections to verify electrical bonding to prevent the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective December 14, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 14, 2011.

We must receive comments on this AD by January 13, 2012.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2010–0232, dated November 12, 2010 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

[T]he FAA published SFAR 88 (Special Federal Aviation Regulation 88) [(66 FR 23086, May 7, 2001)].

By mail referenced 04/00/02/07/01–L296 of March 4th, 2002 and 04/00/02/07/03–L024 of February 3rd, 2003 the JAA [Joint Aviation Authorities] recommended to the National Aviation Authorities (NAA) the application of a similar regulation.

The aim of this regulation is to require all holders of type certificates for transport aircraft certified after 01 January 1958 with a capacity of 30 passengers or more, or a payload of 3,402 kg or more, to carry out a definition review against explosion hazards.

To be compliant with SFAR88/JAA INT/POL 25/12 requirements, this [EASA] AD requires, for operators who have already embodied the Revision 03 or any previous revision of Airbus SB A340–28–4097 on aeroplanes which were previously in SB Configurations 02 or 03 [required by FAA AD 2008–25–02, Amendment 39–15760 (73 FR 75307, December 11, 2008)], an inspection to verify if the electrical bonding of the water drain system (Trim Tank) and the electrical bonding of the ventilation intake system were correctly accomplished or need additional work associated to the aeroplane configuration.

* * * * *

Additional work could involve modifying or installing certain bonding points (such as pipe clamps, screws, attachment fittings, restrictor valves, flame arrestors, and pipes); doing electrical bonding of the wing fuel pumps, the water drain system between certain ribs, a water drain system and the ventilation intake system; depending on configuration. The additional work required by this AD is in addition to the requirements of AD 2008–25–02, Amendment 39–15760 (73 FR 75307, December 11, 2008). The unsafe condition is the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. You may obtain further information by examining the MCAI in the AD docket.

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 (66 FR 23086, May 7, 2001) requires certain type design (*i.e.,* type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: Single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88 (66 FR 23086, May 7, 2001). (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this AD are necessary to

reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Relevant Service Information

Airbus has issued Mandatory Service Bulletin A340–28–4097, Revision 05, including Appendix 1, dated June 3, 2010. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all pertinent information and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

There are no products of this type currently registered in the United States. However, this rule is necessary to ensure that the described unsafe condition is addressed if any of these products are placed on the U.S. Register in the future.

Differences Between the AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a NOTE within the AD.

FAA's Determination of the Effective Date

Since there are currently no domestic operators of this product, notice and opportunity for public comment before issuing this AD are unnecessary.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1232; Directorate Identifier 2011–NM–039–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011–24–09 Airbus: Amendment 39–16873. Docket No. FAA–2011–1232; Directorate Identifier 2011–NM–039–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 14, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A340–211, –212, –213, –311, –312 and –313 airplanes, certificated in any category, all manufacturer serial numbers, on which Airbus modification 41600 has been embodied in production and Airbus Service Bulletin A340–28–4097, dated June 14, 2004; Revision 01, dated March 3, 2005; Revision 02, dated August 16, 2006; or Revision 03, dated July 3, 2007; has been embodied in service, except airplanes on which Airbus modification 49135 has been embodied in production.

Subject

(d) Air Transport Association (ATA) of America Code 28: Fuel.

Reason

(e) The mandatory continued airworthiness information (MCAI) states:

[T]he FAA published SFAR 88 (Special Federal Aviation Regulation 88) [(66 FR 23086, May 7, 2001)].

By mail referenced 04/00/02/07/01–L296 of March 4th, 2002 and 04/00/02/07/03–L024 of February 3rd, 2003 the JAA [Joint Aviation Authorities] recommended to the National Aviation Authorities (NAA) the application of a similar regulation.

The aim of this [EASA] regulation is to require * * * a definition review against explosion hazards.

* * * * *

This AD requires inspections to verify electrical bonding to prevent the potential of ignition sources inside fuel tanks, which, in

combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Actions

(g) Within 24 months after the effective date of this AD, do a detailed inspection of the electrical bonding for the water drain system (trim tank) and the ventilation intake system to verify whether it is equivalent to the electrical bonding done in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–28–4097, Revision 05, including Appendix 1, dated June 3, 2010.

(h) If, during the inspection required by paragraph (g) of this AD, the electrical bonding of the water drain system and the ventilation intake system is found to be not equivalent to the electrical bonding done in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–28–4097, Revision 05, including Appendix 1, dated June 3, 2010: Within 24 months after the effective date of this AD, modify the electrical bonding associated with the airplane configuration in accordance with paragraph 3.B.(11) or 3.B.(12), as applicable, of the Accomplishment Instructions of Airbus Mandatory Service Bulletin A340–28–4097, Revision 05, including Appendix 1, dated June 3, 2010.

(i) A review of the airplane maintenance records is acceptable in lieu of the inspection required by paragraph (g) of this AD provided that the accomplishment of the electrical bonding for the water drain system (trim tank) and the ventilation intake system can be conclusively identified as performed in accordance with Airbus Mandatory Service Bulletin A340–28–4097, Revision 05, including Appendix 1, dated June 3, 2010.

FAA AD Differences

Note 1: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(j) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

Related Information

(k) Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency (EASA) Airworthiness Directive 2010–0232, dated November 12, 2010; and Airbus Mandatory Service Bulletin A340–28–4097, Revision 05, including Appendix 1, dated June 3, 2010; for related information.

Material Incorporated by Reference

(l) You must use Airbus Mandatory Service Bulletin A340–28–4097, Revision 05, including Appendix 1, dated June 3, 2010, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330-A340@airbus.com;* Internet *http://www.airbus.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 14, 2011.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–30229 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1261; Directorate Identifier 2011–NE–38–AD; Amendment 39–16875; AD 2011–24–11]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Honeywell International Inc. ALF502L–2C, ALF502R–3, ALF502R–3A, ALF502R–5, LF507–1F, and LF507–IH turbofan engines. This AD requires removing from service certain second stage high pressure compressor (HPC2) discs. This AD was prompted by a report of cracks found in an HPC2 disc during routine inspection. We are issuing this AD to prevent the affected discs from fracturing before reaching the currently published life limit. A disc fracture could result in an uncontained failure of the disc and damage to the airplane.

DATES: This AD is effective December 14, 2011.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in the AD as of December 14, 2011.

We must receive comments on this AD by January 13, 2012.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this AD, contact Honeywell International Inc., P.O. Box 52181, Phoenix, AZ 85072–2181, *phone:* (800) 601–3099; *Web site: http://*

portal.honeywell.com/wps/portal/aero. You may review copies of the referenced service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (*phone:* (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; *phone:* (562) 627–5245; *fax:* (562) 627–5210; *email: robert.baitoo@faa.gov*.

SUPPLEMENTARY INFORMATION:

Discussion

During a routine inspection, cracks were found in a low-time HPC2 disc, part number (P/N) 2–101–332–12. Analysis has revealed that the cracks initiated during the forging process of a certain material ingot. Honeywell International Inc. has identified a suspect population of 29 HPC2 discs, by serial number (S/N), that were made from the affected material ingot. This condition, if not corrected, could result in an uncontained failure of the disc and damage to the airplane.

Relevant Service Information

We reviewed Honeywell International Inc. Service Bulletin (SB) No. ALF/LF–72–1113, dated September 16, 2011. The SB lists the affected HPC2 discs by P/N and S/N, and describes procedures for removing them from service.

FAA's Determination

We are issuing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

AD Requirements

This AD requires accomplishing the actions specified in the service information described previously.

FAA's Justification and Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because there are no U.S. operators of airplanes with Honeywell International Inc. ALF502L–2C, ALF502R–3, ALF502R–3A, ALF502R–5, LF507–1F, and LF507–IH turbofan engines, with an affected HPC2 disc installed. Therefore, we find that notice and opportunity for prior public comment are unnecessary and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety and was not preceded by notice and an opportunity for public comment. However, we invite you to send any written data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include the docket number FAA–2011–1261 and Directorate Identifier 2011–NE–38–AD at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Costs of Compliance

We estimate that this AD affects no Honeywell International Inc. ALF502L–2C, ALF502R–3, ALF502R–3A, ALF502R–5, LF507–1F, and LF507–IH turbofan engines installed on airplanes of U.S. registry. Therefore, we estimate the total cost of the AD to U.S. operators to be $0.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in subtitle VII, part A, subpart III, section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2011–24–11 Honeywell International Inc. Turbofan Engines: Amendment 39–16875; Docket No. FAA–2011–1261; Directorate Identifier 2011–NE–38–AD.

(a) Effective Date

This AD is effective December 14, 2011.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Honeywell International Inc. ALF502L–2C, ALF502R–3, ALF502R–3A, ALF502R–5, LF507–1F, and LF507–IH turbofan engines with any of the second stage high pressure compressor (HPC2) discs, part number (P/N) 2–101–332–12, serial numbers (S/N) listed in Table 2 of Honeywell International Inc. Service Bulletin (SB) No. ALF/LF–72–1113, dated September 16, 2011, installed.

(d) Unsafe Condition

This AD was prompted by a report of cracks found in an HPC2 disc during routine inspection. We are issuing this AD to prevent the affected discs from fracturing before reaching the currently published life limit. A disc fracture could result in an uncontained failure of the disc and damage to the airplane.

(e) Compliance

Comply with this AD before accumulating 4,500 cycles-since-new on the affected HPC2 disc, or before exceeding 7 years after the effective date of this AD, whichever occurs first, unless already done.

(f) Removal of Affected HPC2 Discs

Remove from service HPC2 discs, P/N 2–101–332–12, S/Ns listed in Table 2 of Honeywell International Inc. SB No. ALF/LF–72–1113, dated September 16, 2011.

(g) Alternative Methods of Compliance (AMOCs)

The Manager, Los Angeles Aircraft Certification Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(h) Related Information

For more information about this AD, contact Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, 3960 Paramount Blvd., Lakewood, CA 90712; *phone:* (562) 627–5245; *fax:* (562) 627–5210; *email: robert.baitoo@faa.gov*.

(i) Material Incorporated by Reference

You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(1) Honeywell International Inc. Service Bulletin No. ALF/LF–72–1113, dated September 16, 2011, approved for IBR December 14, 2011.

(2) For service information identified in this AD, contact Honeywell International Inc., P.O. Box 52181, Phoenix, AZ 85072–2181, *phone:* (800) 601–3099; *Web site: http://portal.honeywell.com/wps/portal/aero.*

(3) You may review copies of the service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Burlington, Massachusetts, on November 15, 2011.

Peter A. White,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–30575 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2010–1206; Directorate Identifier 2009–NM–216–AD; Amendment 39–16868; AD 2011–24–04]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Model DC–10–10, DC–10–10F, and MD–10–10F airplanes. This AD was prompted by reports of three instances of fuel leaks in the lower cap splice of the wing rear spar at station Xors=409. Investigation revealed the fuel leak was due to a crack in the lower cap. If not corrected, this condition could result in fuel leaks or cracking of the lower wing skin and structure, causing possible inability of the structure to sustain the limit load and adversely affecting the structural integrity of the airplane. This AD requires repetitive inspections for cracking on the lower cap of the rear spar of the left and right wings between stations Xors=417 and the outboard edge of the lower cap splice of the wing rear spar at station Xors=400; temporary and permanent repairs if necessary; and repetitive inspections of repaired areas, and corrective actions if necessary. We are issuing this AD to correct the unsafe condition on these products.

DATES: This AD is effective January 3, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of January 3, 2012.

ADDRESSES: For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone (206) 544–5000, extension 2; fax (206) 766–5683; email *dse.boecom@boeing.com*; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: (800) 647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; *phone:* (562) 627–5234; *fax:* (562) 627–5210; *email: nenita.odesa@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on December 30, 2010 (75 FR 82333). That NPRM proposed to require repetitive inspections for cracking on the lower cap of the rear spar of the left and right wings between stations Xors=417 and the outboard edge of the lower cap splice of the wing rear spar at station Xors=400; temporary and permanent repairs if necessary; and repetitive inspections of repaired areas, and corrective actions if necessary.

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (75 FR 82333, December 30, 2010) or on the determination of the cost to the public.

New Service Information

Since publication of the NPRM (75 FR 82333, December 30, 2010), Boeing has

issued Alert Service Bulletin DC10–57A156, Revision 2, dated August 23, 2011. We have updated the references in paragraphs (c) and (g) of this AD to include Boeing Alert Service Bulletin DC10–57A156, Revision 2, dated August 23, 2011. The changes in this revised service bulletin are for clarification only. However, certain inspections called eddy current test high frequency (ETHF) inspections in Boeing Alert Service Bulletin DC10–57A156, Revision 1, dated March 10, 2010 (which was referenced in the NPRM (75 FR 82333, December 30, 2010) as the appropriate source of service information for certain actions), are called high frequency eddy current inspections in Boeing Alert Service Bulletin DC10–57A156, Revision 2, dated August 23, 2011. This is different terminology for the same inspection method. We have followed the terminology in Boeing Alert Service Bulletin DC10–57A156, Revision 2, dated August 23, 2011, and used both terminologies as specified in Boeing Alert Service Bulletin DC10–57A156, Revision 2, dated August 23, 2011. We are also allowing credit for actions done before the effective date of this AD, in accordance with Boeing Alert Service Bulletin DC10–57A156, Revision 1, dated March 10, 2010, and have added that reference to paragraph (h) of this AD.

Since publication of the NPRM (75 FR 82333, December 30, 2010), Boeing has also issued revised service rework drawings to clarify the repair instructions. These service rework drawings do not provide repairs for all conditions specified in the NPRM (75 FR 82333, December 30, 2010). We have updated the references in paragraph (g) of this AD to include Boeing DC–10–10 Service Rework Drawing SR10570019, Revision K, dated April 17, 2009, including Parts List PL SR10570019, Revision K, dated April 23, 2009, including Boeing Engineering Order, Revision L, dated April 14, 2010; and Boeing DC–10–10 Service Rework Drawing SR10570048, Revision K, dated October 7, 2010, including Parts List PL SR10570048, Revision K, dated October 14, 2010. We have also revised the actions in paragraph (g) of this AD to specify which conditions are addressed by these service rework drawings, and which conditions need a repair method approved by the FAA.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting the AD as proposed with the changes described previously—except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (75 FR 82333, December 30, 2010), for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 68 airplanes of U.S. registry.

We estimate the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	2 work-hours × $85 per hour = $170 per inspection cycle.	$0	$170 per inspection cycle.	$11,560 per inspection cycle.

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. Subtitle VII: Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

This AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866,

(2) Is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979),

(3) Will not affect intrastate aviation in Alaska, and

(4) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

2011–24–04 McDonnell Douglas Corporation: Amendment 39–16868; Docket No. FAA–2010–1206; Directorate Identifier 2009–NM–216–AD.

(a) Effective Date

This AD is effective January 3, 2012.

(b) Affected ADs

None.

(c) Applicability

This AD applies to McDonnell Douglas Corporation Model DC–10–10, DC–10–10F, and MD–10–10F airplanes; certificated in any category; as identified in Boeing Alert

Service Bulletin DC10–57A156, Revision 2, dated August 23, 2011.

(d) Subject

Air Transport Association (ATA) of America Code 57: Wings.

(e) Unsafe Condition

This AD results from reports of three instances of fuel leaks in the lower cap splice of the wing rear spar at station Xors=409. The Federal Aviation Administration is issuing this AD to detect and correct cracking on the lower cap of the rear spar of the left and right wings between stations Xors=417 and the outboard edge of the lower cap splice of the wing rear spar at station Xors=400, which could result in fuel leaks or cracking of the lower wing skin and structure, causing possible inability of the structure to sustain the limit load and adversely affecting the structural integrity of the airplane.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Inspection

Within 1,750 flight cycles after the effective date of this AD, do an eddy current test high frequency (ETHF) inspection for cracking on the lower cap of the rear spar of the left and right wings between stations Xors=417 and the outboard edge of the lower cap splice of the wing rear spar at station Xors=400, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin DC10–57A156, Revision 2, dated August 23, 2011.

(1) If no cracking is found, repeat the inspection required by paragraph (g) of this AD thereafter at intervals not to exceed 1,750 flight cycles.

(2) If any cracking is found in the spar cap aft leg at the fastener holes, and that cracking can be removed by hole enlargement, before further flight, do a permanent repair, in accordance with Boeing DC–10–10 Service Rework Drawing SR10570048, Revision K, dated October 7, 2010, including Parts List PL SR10570048, Revision K, dated October 14, 2010. Within 1,750 flight cycles after doing the applicable permanent repair, and thereafter at intervals not to exceed 1,750 flight cycles, do ETHF and high frequency eddy current inspections for cracking in accordance with Boeing DC–10–10 Service Rework Drawing SR10570048, Revision K, dated October 7, 2010, including Parts List PL SR10570048, Revision K, dated October 14, 2010. If any cracking is found during any inspection required by this paragraph, before further flight, repair the cracking, in accordance with the procedures specified in paragraph (i) of this AD.

(3) If any cracking is found in the spar cap aft leg at the fastener holes, and that cracking cannot be removed by hole enlargement but it does not extend into the vertical leg, before further flight, do the applicable actions specified in paragraph (g)(3)(i) or (g)(3)(ii) of this AD:

(i) If cracking is found between Station Xors=400 and inboard of Station Xors=408, repair the cracking, in accordance with the procedures specified in paragraph (i) of this AD (Alternative Method of Compliance (AMOCs) paragraph).

(ii) If cracking is found between Stations Xors=408 and Xors=417, do a permanent repair, in accordance with Boeing DC–10–10 Service Rework Drawing SR10570048, Revision K, dated October 7, 2010, including Parts List PL SR10570048, Revision K, dated October 14, 2010. Within 4,550 flight cycles after doing a permanent repair, and thereafter at intervals not to exceed 4,550 flight cycles, do ETHF and ultrasonic inspections for cracking, in accordance with Boeing DC–10–10 Service Rework Drawing SR10570048, Revision K, dated October 7, 2010, including Parts List PL SR10570048, Revision K, dated October 14, 2010. If any cracking is found during any inspection required by this paragraph, before further flight, repair the cracking, in accordance with the procedures specified in paragraph (i) of this AD.

(4) If any cracking is found in the spar cap aft leg at fastener holes and that cracking extends into the vertical leg of the spar cap, do the actions specified in paragraph (g)(4)(i) or (g)(4)(ii) of this AD.

(i) If any cracking is found between Station Xors=400 and inboard of Station Xors=408, before further flight, do the applicable permanent repair, in accordance with Boeing DC–10–10 Service Rework Drawing SR10570019, Revision K, dated April 17, 2009, including Parts List PL SR10570019, Revision K, dated April 23, 2009, including Boeing Engineering Order, Revision L, dated April 14, 2010. Within 4,550 flight cycles after doing the permanent repair, and thereafter at intervals not to exceed 4,550 flight cycles, do ETHF and ultrasonic inspections for cracking of the repaired area, in accordance with Boeing DC–10–10 Service Rework Drawing SR10570019, Revision K, dated April 17, 2009, including Parts List PL SR10570019, Revision K, dated April 23, 2009, including Boeing Engineering Order, Revision L, dated April 14, 2010. If any cracking is found during any inspection required by this paragraph, before further flight, repair the cracking, in accordance with the procedures specified in paragraph (i) of this AD.

(ii) If any cracking is found between Stations Xors=408 and Xors=417, do the actions in paragraphs (g)(4)(ii)(A) or (g)(4)(ii)(B) of this AD.

(A) Do the actions in paragraphs (g)(4)(ii)(A)(*1*) and (g)(4)(ii)(A)(*2*) of this AD.

(*1*) Before further flight, do a temporary repair, in accordance with Boeing DC–10–10 Service Rework Drawing SR10570048, Revision K, dated October 7, 2010, including Parts List PL SR10570048, Revision K, dated October 14, 2010. Within 1,650 flight cycles after doing the temporary repair; and thereafter at intervals not to exceed 1,650 flight cycles, do ETHF and ultrasonic inspections for cracking of the repaired area, in accordance with Boeing DC–10–10 Service Rework Drawing SR10570048, Revision K, dated October 7, 2010, including Parts List PL SR10570048, Revision K, dated October 14, 2010, until the permanent repair required by paragraph (g)(4)(ii)(A)(*2*) of this AD is done. If any cracking is found during any inspection required by this paragraph, before further flight, repair the cracking, in accordance with the procedures specified in paragraph (i) of this AD.

(*2*) Within 7,000 flight cycles after the temporary repair has been done, do the applicable permanent repair, in accordance with Boeing DC–10–10 Service Rework Drawing SR10570019, Revision K, dated April 17, 2009, including Parts List PL SR10570019, Revision K, dated April 23, 2009, including Boeing Engineering Order, Revision L, dated April 14, 2010. Within 4,550 flight cycles after doing the permanent repair, and thereafter at intervals not to exceed 4,550 flight cycles, do ETHF and ultrasonic inspections for cracking of the repaired area, in accordance with Boeing DC–10–10 Service Rework Drawing SR10570019, Revision K, dated April 17, 2009, including Parts List PL SR10570019, Revision K, dated April 23, 2009, including Boeing Engineering Order, Revision L, dated April 14, 2010. If any cracking is found during any inspection required by this paragraph, before further flight, repair the cracking, in accordance with the procedures specified in paragraph (i) of this AD.

(B) Before further flight do the applicable permanent repair, in accordance with Boeing DC–10–10 Service Rework Drawing SR10570019, Revision K, dated April 17, 2009, including Parts List PL SR10570019, Revision K, dated April 23, 2009, including Boeing Engineering Order, Revision L, dated April 14, 2010. Within 4,550 flight cycles after doing the permanent repair, and thereafter at intervals not to exceed 4,550 flight cycles, do ETHF and ultrasonic inspections for cracking of the repaired area, in accordance with Boeing DC–10–10 Service Rework Drawing SR10570019, Revision K, dated April 17, 2009, including Parts List PL SR10570019, Revision K, dated April 23, 2009, including Boeing Engineering Order, Revision L, dated April 14, 2010. If any cracking is found during any inspection required by this paragraph, before further flight, repair the cracking, in accordance with the procedures specified in paragraph (i) of this AD.

(h) Credit for Actions Accomplished in Accordance With Previous Service Information

Actions accomplished before the effective date of this AD according to Boeing Alert Service Bulletin DC10–57A156, dated September 16, 2009; and Revision 1, dated March 10, 2010; are considered acceptable for compliance with the corresponding actions specified in this AD.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office, (ACO) FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; phone: (562) 627–5234; fax: (562) 627–5210; email: *nenita.odessa@faa.gov.*

(2) To request a different method of compliance or a different compliance time

for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(j) Related Information

For more information about this AD, contact Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles ACO, 3960 Paramount Boulevard, Lakewood, California 90712–4137; *phone:* (562) 627–5234; fax: (562) 627–5210; email: *nenita.odessa@faa.gov.*

(k) Material Incorporated by Reference

You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(1) Boeing Alert Service Bulletin DC10–57A156, Revision 2, dated August 23, 2011; IBR approved January 3, 2012.

(2) Boeing DC–10–10 Service Rework Drawing SR10570019, Revision K, dated April 17, 2009, including Parts List PL SR10570019, Revision K, dated April 23, 2009, including Boeing Engineering Order, Revision L, dated April 14, 2010; IBR approved January 3, 2012. Only Sheet 1 of this drawing indicates the revision date of this document.

(3) Boeing DC–10–10 Service Rework Drawing SR10570048, Revision K, dated October 7, 2010, including Parts List PL SR10570048, Revision K, dated October 14, 2010; IBR approved January 3, 2012. Only Sheet 1 of this drawing indicates the revision date for this document.

(4) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, California 90846–0001; telephone (206) 544–5000, extension 2; fax (206) 766–5683; email *dse.boecom@boeing.com;* Internet *https://www.myboeingfleet.com.*

(5) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

(6) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 7, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–29801 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–1031; Directorate Identifier 2011–NE–27–AD; Amendment 39–16871; AD 2011–24–07]

RIN 2120–AA64

Airworthiness Directives; Turbomeca S.A. Arriel 2B Turboshaft Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Non-conformities on adjustment of some hydromechanical units (HMUs) have been reported by a Turbomeca repair centre. The technical investigations carried out by Turbomeca are showing that only a limited number of HMUs are potentially affected by this non-conformity to HMU adjustment.

Twenty nine HMUs have been identified with the non-conformities. We are issuing this AD to prevent an uncommanded inflight shutdown, which could result in an emergency autorotation landing.

DATES: This AD becomes effective December 14, 2011.

We must receive comments on this AD by December 29, 2011.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of December 14, 2011.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

For service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; *phone:* 33–05–59–74–40–00, *fax:* 33–05–59–74–45–15. You may review copies of the service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (*phone:* (800) 647–5527) is the same as the Mail address provided in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *phone:* (781) 238–7758; *fax:* (781) 238–7199; *email: mark.riley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2011–0128–E, dated July 6, 2011 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

Non-conformities on adjustment of some hydromechanical units (HMUs) have been reported by a Turbomeca repair centre. The technical investigations carried out by Turbomeca are showing that only a limited number of HMUs are potentially affected by this non-conformity to HMU adjustment.

Twenty nine HMUs have been identified with potential non-conformities in the proper adjustment of

the metering valve. The exact location of these 29 HMUs is unknown. This AD requires actions to be done before further flight. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Turbomeca S.A. has issued Alert Mandatory Service Bulletin (SB) No. A292 73 2841, Version A, dated July 4, 2011, SB No. 292 73 2143, dated July 24, 2007, and SB No. 292 73 2840, Version A, dated June 28, 2011. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI. The one-time functional test required by the service bulletin is not a normal engine run-up test: the one-time functional test involves additional requirements including mode switching, that are not part of a normal engine run-up after start.

FAA's Determination and Requirements of This AD

This product has been approved by the aviation authority of France, and is approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA has notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because this AD requires either replacing, or functional testing of the HMU before further flight. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2011–1031; Directorate Identifier 2011–NE–27–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of the Web site, anyone can find and read the comments in any of our dockets, including, if provided, the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

(1) Is not a ''significant regulatory action'' under Executive Order 12866;

(2) Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

(3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new AD:

2011–24–07 Turbomeca S.A.: Amendment 39–16871; Docket No. FAA–2011–1031; Directorate Identifier 2011–NE–27–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective December 14, 2011.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Turbomeca Arriel 2B turboshaft engines with a hydromechanical unit (HMU) that has a part number (P/N) and serial number (S/N) listed in Table 1 of this AD installed.

TABLE 1—AFFECTED HMUS

P/Ns	S/Ns
0292860750	1008B
0292860750	1068B
0292860750	1142B
0292860750	1143B
0292860750	1183B
0292860750	1230B
0292860750	272B
0292860750	275B
0292860750	342B
0292860750	363B
0292860750	422B
0292860750	436B
0292860750	499B
0292860750	524B
0292860750	536B
0292860750	560B
0292860750	598B
0292860750	606B
0292860750	647B
0292860750	652B
0292860750	716B
0292860750	749B
0292860750	763B
0292860750	806B

TABLE 1—AFFECTED HMUS—Continued

P/Ns	S/Ns
0292860750	830B
0292860750	861B
0292860750	944B
0292860750	967B
0292861020	632B

Reason

(d) This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

Non-conformities on adjustment of some hydromechanical units (HMUs) have been reported by a Turbomeca repair centre. The technical investigations carried out by Turbomeca are showing that only a limited number of HMUs are potentially affected by this non-conformity to HMU adjustment.

Twenty nine HMUs have been identified with potential non-conformities in the proper adjustment of the metering valve. The exact location of these 29 HMUs is unknown. We are issuing this AD to prevent an uncommanded inflight shutdown, which could result in an emergency autorotation landing.

Actions and Compliance

(e) Unless already done, do the following actions.

(f) Before further flight, perform a one-time functional test of the engine to confirm proper engine operation. This one-time functional test is not a normal engine run-up test. Use the instructions in paragraph 2.B.(1)(a) of Turbomeca Alert Mandatory Service Bulletin No. A292 73 2841, Version A, dated July 4, 2011, to perform the functional test.

(1) If the engine fails the functional test, replace the HMU with an HMU eligible for installation.

(2) If the engine passes the functional test, do the following:

(i) Within four months after the effective date of this AD, install software modification TU143 on the Engine Electronic Control Unit of the engine. Use paragraph 2.B. of Turbomeca Service Bulletin No. 292 73 2143, dated July 24, 2007 to do the installation; and

(ii) Within 12 months after the effective date of this AD, replace the HMU with an HMU eligible for installation.

Definition

(g) For the purpose of this AD, an HMU eligible for installation is defined as one with a serial number not listed in Table 1 of this AD, or, an HMU that passed when tested using Turbomeca Service Bulletin No. 292 73 2840.

FAA AD Differences

(h) None.

Alternative Methods of Compliance (AMOCs)

(i) The Manager, Engine Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

Related Information

(j) Refer to MCAI Airworthiness Directive 2011–0128–E, dated July 6, 2011, for related information.

(k) Contact Mark Riley, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *phone:* (781) 238–7758; *fax:* (781) 238–7199, *email: mark.riley@faa.gov;* for more information about this AD.

Material Incorporated by Reference

(l) You must use the following service information to do the actions required by this AD, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(1) Turbomeca Alert Mandatory Service Bulletin No. A292 73 2841, Version A, dated July 4, 2011, approved for IBR December 14, 2011.

(2) Turbomeca Service Bulletin No. 292 73 2143, dated July 24, 2007, approved for IBR December 14, 2011.

(3) For service information identified in this AD, contact Turbomeca S.A., 40220 Tarnos, France; *phone:* 33–05–59–74–40–00, *fax:* 33–05–59–74–45–15.

(4) You may review copies of the service information at the FAA, New England Region, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call (781) 238–7125.

(5) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call (202) 741–6030 or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Burlington, Massachusetts on November 14, 2011.

Peter A. White,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2011–30574 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2011–0717; Directorate Identifier 2010–NM–108–AD; Amendment 39–16869; AD 2011–24–05]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: We are superseding an existing airworthiness directive (AD) that applies to certain Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes; and Model A340–200 and –300 series airplanes. This AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

During A330 and A340 aeroplanes fatigue tests, cracks appeared on the right (RH) and left (LH) sides between the crossing area of the keel beam fitting and the front spar of the Centre Wing Box (CWB). This condition, if not corrected, could lead to keel beam rupture which would affect the area structural integrity.

* * * * *

We are issuing this AD to require actions to correct the unsafe condition on these products.

DATES: This AD becomes effective January 3, 2012.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of January 3, 2012.

The Director of the Federal Register approved the incorporation by reference of certain other publications listed in this AD as of September 13, 2007 (72 FR 44731, August 9, 2007).

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov* or in person at the U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on July 19, 2011 (76 FR 42602), and proposed to supersede AD 2007–16–02, Amendment 39–15141 (72 FR 44731, August 9, 2007). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

During A330 and A340 aeroplanes fatigue tests, cracks appeared on the right (RH) and left (LH) sides between the crossing area of the keel beam fitting and the front spar of the Centre Wing Box (CWB). This condition, if not corrected, could lead to keel beam rupture which would affect the area structural integrity.

In order to maintain the structural integrity of the aeroplane, EASA AD 2006–0315R1 required repetitive special detailed inspections on the horizontal flange of the keel beam in the area of first fastener hole aft of FR40.

This [EASA] AD, which supersedes EASA AD 2006–0315R1:

—Retains the inspection requirements of EASA AD 2006–0315R1,

—Extends the AD applicability to aeroplanes which have embodied Airbus modification 49202, and

—Modifies the inspection thresholds and intervals.

You may obtain further information by examining the MCAI in the AD docket.

Comments

We gave the public the opportunity to participate in developing this AD. We considered the single comment received.

Request To Update Service Information

Airbus requested that we incorporate the latest revisions of the primary service bulletins, Airbus Mandatory Service Bulletins A330–57–3081 and A340–57–4089, both including Appendix 01, both Revision 04, both dated May 31, 2011, and give credit for actions performed according to the revisions of these service bulletins specified in the NPRM (76 FR 42602, July 19, 2011).

We agree to specify Revision 04, dated May 31, 2011, of Airbus Mandatory Service Bulletins A330–57–3081 and A340–57–4089, and have changed paragraphs (h), (j)(1), (j)(3), (n), (n)(1)(i), (n)(1)(ii)(B), (n)(2)(ii), (p)(1), and (p)(2); tables 1 and 3; and Notes 3 and 4; of this AD accordingly. Revision 04 of those service bulletins states that no additional work is required for airplanes modified by any previous issue of those service bulletins. We have also added Revision 03, dated July 31, 2009, of those service bulletins to table 2 of this AD, ''Credit Service Information for Certain Actions.''

Conclusion

We reviewed the available data, including the comment received, and determined that air safety and the public interest require adopting the AD with the changes described previously. We determined that these changes will not increase the economic burden on any operator or increase the scope of the AD.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have required different actions in this AD from those in the MCAI in order to follow our FAA policies. Any such differences are highlighted in a Note within the AD.

Costs of Compliance

Based on the service information, we estimate that this AD will affect about 35 products of U.S. registry.

For the 9 airplanes affected by the existing AD, the actions that are required by AD 2007–16–02, Amendment 39–15141 (72 FR 44731, August 9, 2007), and retained in this AD take about 41 work-hours per product, at an average labor rate of $85 per work hour. Required parts cost about $191 per product. Based on these figures, the estimated cost of the currently required actions is $3,676 per product.

For the 26 additional airplanes added in this AD, we estimate the actions in this AD will take about 41 work-hours per product, at an average labor rate of $85 per work hour. Required parts will cost about $191 per product. Based on these figures, the estimated cost of the proposed AD is $3,676 per product.

In addition, because this AD advises to contact the manufacturer for repair instructions, we cannot estimate the parts or labor costs for any necessary follow-on actions. We have no way of determining the number of products that may need these actions.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. ''Subtitle VII: Aviation Programs,'' describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in ''Subtitle VII, Part A, Subpart III, Section 44701: General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;

2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains the NPRM (76 FR 42602, July 19, 2011), the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing Amendment 39–15141 (72 FR

44731, August 9, 2007) and adding the following new AD:

2011–24–05 Airbus: Amendment 39–16869. Docket No. FAA–2011–0717; Directorate Identifier 2010–NM–108–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective January 3, 2012.

Affected ADs

(b) This AD supersedes AD 2007–16–02, Amendment 39–15141 (72 FR 44731, August 9, 2007).

Applicability

(c) This AD applies to the airplanes identified in paragraphs (c)(1) and (c)(2) of this AD; certificated in any category; except as provided by paragraph (c)(3) of this AD.

(1) Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 airplanes, all serial numbers, except those on which Airbus modification 55306 or 55792 has been embodied in production.

(2) Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes, all serial numbers, except those on which Airbus modification 55306 or 55792 has been embodied in production.

(3) This AD is not applicable to Airbus Model A340–211, –212, –213, –311, –312, and –313 airplanes on which the repair specified in Airbus Repair Drawing R57115053, R57115051, or R57115047 (installation of titanium doubler on both sides) has been accomplished. AD 2007–12–08, Amendment 39–15086 (72 FR 31171, June 6, 2007), applies to these airplanes.

Subject

(d) Air Transport Association (ATA) of America Code 57: Wings.

Reason

(e) The mandatory continuing airworthiness information (MCAI) states:

During A330 and A340 aeroplanes fatigue tests, cracks appeared on the right (RH) and left (LH) sides between the crossing area of the keel beam fitting and the front spar of the Centre Wing Box (CWB). This condition, if not corrected, could lead to keel beam rupture which would affect the area structural integrity.

* * * * *

Compliance

(f) You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

Restatement of Requirements of AD 2007–16–02, Amendment 39–15141 (72 FR 44731, August 9, 2007) With Revised Service Information

(g) For Model A330–201, –202, –203, –223, –243, –301, –321, –322, –323, –341, –342, and –343 airplanes, except those on which Airbus modification 49202 has been embodied in production, or Airbus Service Bulletin A330–57–3090 has been embodied in service, and Model A340–200 and –300 series airplanes, except those on which Airbus modification 49202 has been embodied in production or Airbus Service Bulletin A340–57–4098 has been embodied in service, and except Model A340–211, –212, –213, –311, –312, and –313 airplanes on which the repair specified in Airbus Repair Drawing R57115053, R57115051, or R57115047 has been accomplished: Do the actions required by paragraphs (h), (l), and (m) of this AD.

(h) For airplanes identified in paragraph (g) of this AD, within the mandatory threshold (flight cycles or flight hours) mentioned in the paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02; or A330–57–3081, including Appendix 01, Revision 02; both dated January 24, 2006; depending on the configuration of the aircraft model; or within 3 months after September 13, 2007 (the effective date of AD 2007–16–02 (72 FR 44731, August 9, 2007)); whichever occurs later: Carry out the NDT (non-destructive test) inspection of the hole(s) of the horizontal flange of the keel beam located on FR 40 datum on RH (right-hand) and/or LH (left-hand) side of the fuselage, in accordance with the instructions of the applicable service bulletin listed in table 1 of this AD. After the effective date of this AD, use only Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; as applicable. Inspection in accordance with Airbus A330/A340 200–300 Technical Disposition F57D03012810, Issue B, dated August 18, 2003; or Airbus A330/A340 Technical Disposition 582.0651/2002, Issue A, dated October 17, 2002; satisfies the inspection requirements for the first rotating probe inspection which is specified at the inspection threshold of this AD. Doing the inspection required by paragraph (n) of this AD terminates the requirements of this paragraph of this AD.

Note 1: In order to prevent large repairs or heavy maintenance, Airbus recommends to perform the above inspection according to recommended thresholds mentioned in paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02; or Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02; both dated January 24, 2006.

TABLE 1—ACCEPTABLE SERVICE INFORMATION FOR CERTAIN REQUIREMENTS OF PARAGRAPH (H) OF THIS AD

Document	Revision	Date
Airbus Service Bulletin A330–57–3081, including Appendix 01	02	January 24, 2006.
Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01	04	May 31, 2011.
Airbus Service Bulletin A340–57–4089, including Appendix 01	02	January 24, 2006.
Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01	04	May 31, 2011.

(i) In case of any crack finding during the inspection required by paragraph (h) of this AD, before further flight, contact Airbus in order to get repair instructions before next flight, and repair before further flight.

(j) Should no crack be detected during the inspection required by paragraph (h) of this AD:

(1) Before further flight: Follow up the actions indicated in the flow charts, Figure 7, 8, or 9, of Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006, or Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; or Figure 5, 6, or 7, of Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006, or Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; in accordance with the instructions of Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006, or Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006, or Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; as applicable.

(2) Within 30 days after September 13, 2007, or within 30 days after doing the inspection required by paragraph (h) of this AD, whichever occurs later: Send the report of actions carried out in paragraph (j)(1) of this AD to Airbus.

(3) Renew the inspection at mandatory intervals given in paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006; or Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006; as applicable; in accordance with the instructions of Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006, or Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006, or Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; as applicable; and send the inspection results to Airbus. Doing the inspection required by

paragraph (n) of this AD terminates the requirements of this paragraph of this AD.

Note 2: In order to prevent large repairs or heavy maintenance, Airbus recommends to perform the above repetitive inspection according to recommended intervals mentioned in paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006; or Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006.

(k) Upon detection of a crack during a repetitive inspection required by paragraph (j)(3) of this AD, before further flight, contact Airbus to get repair instructions, and repair before further flight.

(l) For airplanes identified in paragraph (g) of this AD: No additional work is required for compliance with paragraph (h) of this AD for aircraft on which the inspection specified in Airbus Service Bulletin A330–57–3081, dated October 30, 2003, or Revision 01, dated May 18, 2004; or Airbus Service Bulletin A340–57–4089, dated October 30, 2003, or Revision 01, dated March 2, 2004, has been accomplished. Nevertheless, the operators must check that their inspection program is in accordance with paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006; or Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006; as applicable; for the repetitive inspection.

(m) For airplanes identified in paragraph (g) of this AD on which Airbus Modification 41652 is not embodied: When the aircraft has been modified in accordance with Airbus Service Bulletin A330–57–3090, dated March 27, 2006; or Airbus Service Bulletin A340–57–4098, dated March 27, 2006; as applicable; the repetitive inspections required by this AD are cancelled. In case of any crack finding during the modification: Where the applicable service bulletin specifies to contact Airbus, before further flight, contact Airbus to get repair instructions, and repair.

New Requirements of This AD

(n) At the applicable time in paragraph (n)(1) or (n)(2) of this AD: Do an NDT inspection of the hole(s) of the horizontal flange of the keel beam located on FR 40 datum on RH and/or LH side of the fuselage, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; as applicable. Inspection in accordance with Airbus A330/A340 200–300 Technical Disposition F57D03012810, Issue B, dated August 18, 2003; or Airbus A330/A340 Technical Disposition 582.0651/2002, Issue A, dated October 17, 2002; is acceptable for compliance with the inspection requirements for the first rotating probe inspection required by this paragraph. Doing the inspection required by this paragraph terminates the requirements of paragraphs (h) and (j)(3) of this AD.

(1) For airplanes on which an inspection required by paragraph (h) of this AD has not been done as of the effective date of this AD: At the applicable time specified in paragraph (n)(1)(i) or (n)(1)(ii) of this AD.

(i) For all airplanes except those identified in paragraph (g) of this AD: Within the ''Mandatory Threshold'' (flight cycles or flight hours) specified in table 1 of paragraph 1.E.(2) of the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; as applicable; or within 3 months after the effective date of this AD; whichever occurs later. The compliance times for configurations 02 through 06 specified in the ''Mandatory Threshold'' column in table 1 of paragraph 1.E., ''Compliance,'' are total flight cycles and total flight hours.

(ii) For airplanes identified in paragraph (g) of this AD: At the earlier of the times specified in paragraphs (n)(1)(ii)(A) and (n)(1)(ii)(B) of this AD.

(A) Within the ''Mandatory Threshold'' (flight cycles or flight hours) specified in table 1 of paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006; or Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006; depending on the configuration of the aircraft model; or within 3 months after September 13, 2007; whichever occurs later. The compliance times for Model A330 post-mod. No. 41652 and pre-mod. No. 44360, post-mod. No. 44360, and pre-mod. No. 49202 (specified in Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006); and Model A340 post-mod. No. 41652, post-mod. No. 43500 and pre-mod. No. 44360, post-mod. No. 44360 and pre-mod. No. 49202, and Weight Variant 027 (specified in Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006); specified in the ''Mandatory Threshold'' column in table 1 of paragraph 1.E., ''Compliance,'' are total flight cycles and total flight hours.

(B) Within the ''Mandatory Threshold'' (flight cycles or flight hours) specified in table 1 of paragraph 1.E.(2) of the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; as applicable; or within 3 months after the effective date of this AD; whichever occurs later. The compliance times for configurations 02 through 06 specified in the ''Mandatory Threshold'' column in table 1 of paragraph 1.E., ''Compliance,'' are total flight cycles and total flight hours.

(2) For airplanes on which an inspection required by paragraph (h) of this AD has been done as of the effective date of this AD: At the earlier of the times specified in paragraphs (n)(2)(i) and (n)(2)(ii) of this AD.

(i) Within the ''Mandatory Intervals'' given in table 1 of paragraph 1.E.(2) of Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006; or Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006; as applicable.

(ii) Within the applicable ''Mandatory Interval'' specified in table 1 of Paragraph 1.E.(2). of Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; as applicable; or within 3 months after the effective date of this AD; whichever occurs later.

Note 3: To prevent large repairs or heavy maintenance, Airbus recommends to perform the above inspection according to recommended thresholds specified in paragraph 1.E.(2) of Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; as applicable.

(o) If any cracking is found during any inspection required by paragraph (n) of this AD, before further flight, repair in accordance with a method approved by the International Branch, ANM–116, Transport Airplane Directorate, FAA, or European Aviation Safety Agency (EASA) (or its delegated agent).

(p) If no cracking is found during any inspection required by paragraph (n) of this AD, do the actions required by paragraphs (p)(1) and (p)(2) of this AD.

(1) Before further flight: Install new or oversized fastener, as applicable; seal the fastener; and do all other applicable actions; in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; as applicable.

(2) Repeat the inspection required by paragraph (n) of this AD thereafter at intervals not to exceed the mandatory intervals specified in Paragraph 1.E.(2). of Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; as applicable.

Note 4: To prevent large repairs or heavy maintenance, Airbus recommends to perform the above repetitive inspection according to recommended intervals mentioned in paragraph 1.E.(2) of Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011; or Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011; as applicable.

Credit for Actions Accomplished in Accordance With Previous Service Information

(q) Inspections done before the effective date of this AD in accordance with the service information specified in table 2 of this AD are acceptable for compliance with

the corresponding inspection required by paragraph (n) of this AD.

TABLE 2—CREDIT SERVICE INFORMATION FOR CERTAIN ACTIONS

Document	Revision	Date
Airbus Service Bulletin A330–57–3081, including Appendix 01	02	January 24, 2006.
Airbus Mandatory Service Bulletin A330–57–3081	03	July 31, 2009.
Airbus Service Bulletin A340–57–4089, including Appendix 01	02	January 24, 2006.
Airbus Mandatory Service Bulletin A340–57–4089	03	July 31, 2009.
Airbus Service Bulletin A330–57–3081	.....	October 30, 2003.
Airbus Service Bulletin A330–57–3081	01	May 18, 2004.
Airbus Service Bulletin A340–57–4089	.....	October 30, 2003.
Airbus Service Bulletin A340–57–4089	01	March 2, 2004.

(r) Modifying the fasteners installation in the junction keel beam fitting at FR 40, in accordance with Airbus Service Bulletin A330–57–3098, dated August 30, 2007; or Airbus Service Bulletin A340–57–4106, dated August 30, 2007; as applicable; before the effective date of this AD terminates the requirements of this AD; except for airplanes on which a crack was detected at hole 5 before oversizing of the keel beam (in accordance with step 3.B.(1)(b)*3* of the Accomplishment Instructions of Airbus Service Bulletin A330–57–3098, dated August 30, 2007; or Airbus Service Bulletin A340–57–4106, dated August 30, 2007), before further flight, repair in accordance with a method approved by the International Branch, ANM–116, Transport Airplane Directorate, FAA, or EASA (or its delegated agent).

(s) Modifying the fasteners installation in the junction keel beam fitting at FR 40, in accordance with Airbus Service Bulletin A330–57–3098, excluding Appendix 1, Revision 01, dated July 31, 2009; or Airbus Service Bulletin A340–57–4106, excluding Appendix 1, Revision 01, dated July 31, 2009; as applicable; terminates the requirements of this AD.

(t) Modifying the fasteners installation in the junction keel beam fitting at FR 40, in accordance with Airbus Service Bulletin A330–57–3090, dated March 27, 2006; or Airbus Service Bulletin A340–57–4098, dated March 27, 2006; as applicable; terminates the requirements of this AD.

(u) In case of any crack finding during any modification specified paragraphs (r), (s), and (t) of this AD: Where the applicable service bulletin specifies to contact Airbus, before further flight, repair in accordance with a method approved by the International Branch, FAA, or EASA (or its delegated agent).

FAA AD Differences

Note 5: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(v) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, *Attn:* Information Collection Clearance Officer, AES–200.

Related Information

(w) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2010–0024, dated February 12, 2010, and the applicable service information specified in table 3 of this AD, for related information.

TABLE 3—RELATED SERVICE INFORMATION

Document	Revision	Date
Airbus Service Bulletin A330–57–3081, including Appendix 01	02	January 24, 2006.
Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01	04	May 31, 2011.
Airbus Service Bulletin A340–57–4089, including Appendix 01	02	January 24, 2006.
Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01	04	May 31, 2011.
Airbus Service Bulletin A330–57–3090	.....	March 27, 2006.
Airbus Service Bulletin A330–57–3098, excluding Appendix 1	01	July 31, 2009.
Airbus Service Bulletin A340–57–4106, excluding Appendix 1	01	July 31, 2009.
Airbus Service Bulletin A340–57–4098	.....	March 27, 2006.
Airbus A330/A340 200–300 Technical Disposition F57D03012810	Issue B	August 18, 2003.
Airbus A330/A340 Technical Disposition 582.0651/2002	Issue A	October 17, 2002.

Material Incorporated by Reference

(x) You must use the following service information specified in paragraphs (x)(1), (x)(2), (x)(7), (x)(8), (x)(9), and (x)(10) of this AD, as applicable, to do the actions required by this AD, unless the AD specifies otherwise. If you accomplish the optional actions specified by this AD, you must use the service information specified in paragraphs (x)(3), (x)(4), (x)(5), (x)(6), (x)(9), and (x)(10) of this AD, as applicable, to perform those actions, unless the AD specifies otherwise. The Director of the Federal Register approved the incorporation by reference (IBR) under 5 U.S.C. 552(a) and 1 CFR part 51 of the following service information on the date specified:

(1) Airbus Mandatory Service Bulletin A330–57–3081, including Appendix 01, Revision 04, dated May 31, 2011, approved for IBR January 3, 2012.

(2) Airbus Mandatory Service Bulletin A340–57–4089, including Appendix 01, Revision 04, dated May 31, 2011, approved for IBR January 3, 2012.

(3) Airbus Service Bulletin A330–57–3098, excluding Appendix 1, Revision 01, dated July 31, 2009, approved for IBR January 3, 2012.

(4) Airbus Service Bulletin A340–57–4106, excluding Appendix 1, Revision 01, dated July 31, 2009, approved for IBR January 3, 2012.

(5) Airbus A330/A340 200–300 Technical Disposition F57D03012810, Issue B, dated August 18, 2003, approved for IBR January 3, 2012.

(6) Airbus A330/A340 Technical Disposition 582.0651/2002, Issue A, dated October 17, 2002, approved for IBR January 3, 2012.

(7) Airbus Service Bulletin A330–57–3081, including Appendix 01, Revision 02, dated January 24, 2006, approved for IBR September 13, 2007 (72 FR 44731, August 9, 2007).

(8) Airbus Service Bulletin A340–57–4089, including Appendix 01, Revision 02, dated January 24, 2006, approved for IBR September 13, 2007 (72 FR 44731, August 9, 2007).

(9) Airbus Service Bulletin A330–57–3090, March 27, 2006, approved for IBR September 13, 2007 (72 FR 44731, August 9, 2007).

(10) Airbus Service Bulletin A340–57–4098, March 27, 2006, approved for IBR September 13, 2007 (72 FR 44731, August 9, 2007).

(11) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80; email *airworthiness.A330–A340@airbus.com;* Internet *http://www.airbus.com.*

(12) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call (425) 227–1221.

(13) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at an NARA facility, call (202) 741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on November 7, 2011.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2011–29803 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0845; Airspace Docket No. 11–ACE–19]

Amendment of Class E Airspace; Carroll, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Carroll, IA. Decommissioning of the Carroll non-directional beacon (NDB) at Arthur N. Neu Airport, Carroll, IA, has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On August 26, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Carroll, IA, reconfiguring controlled airspace at Arthur N. Neu Airport (76 FR 53353) Docket No. FAA–2011–0845. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface for the Carroll, IA area. Decommissioning of the Carroll NDB and cancellation of the NDB approach at Arthur N. Neu Airport has made reconfiguration of the airspace necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Arthur N. Neu Airport, Carroll, IA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR Part 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ACE IA E5 Carroll, IA [Amended]

Arthur N. Neu Airport, IA
(Lat. 42°02′46″ N., long. 94°47′20″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Arthur N. Neu Airport.

Issued in Fort Worth, Texas, on November 9, 2011.

Gail L. Kasson,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–30580 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0851; Airspace Docket No. 11–ASW–10]

Amendment of Class E Airspace; Ardmore, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Ardmore, OK. Decommissioning of the Arbuckle non-directional beacon (NDB) and cancellation of the NDB Standard Instrument Approach Procedure (SIAP) at Ardmore Municipal Airport, Ardmore, OK, as well as the addition of new area navigation (RNAV) SIAPs, has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport. This action also updates the geographic coordinates of the airport.

DATES: *Effective date:* 0901 UTC, February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR Part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On August 26, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Ardmore, OK, reconfiguring controlled airspace at Ardmore Municipal Airport (76 FR 53355) Docket No. FAA–2011–0851. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace designated as an extension to a Class D surface area, and Class E airspace extending upward from 700 feet above the surface for the Ardmore, OK area. Decommissioning of the Arbuckle NDB and cancellation of the NDB approach at Ardmore Municipal Airport, as well as the creation of new RNAV standard instrument approach procedures, has made reconfiguration of the airspace necessary for the safety and management of IFR operations at the airport. Also, this action updates the geographic coordinates of the airport to coincide with the FAA's aeronautical database.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Ardmore Municipal Airport, Ardmore, OK.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6004 Class E Airspace areas designated as an extension to a Class D surface area.

* * * * *

ASW OK E4 Ardmore, OK [Amended]

Ardmore Municipal Airport, OK
(Lat. 34°18′15″ N., long. 97°01′14'' W.)
Ardmore VORTAC

(Lat. 34°12′42″ N., long. 97°10′06″ W.)

That airspace extending upward from the surface within 1.3 miles each side of the Ardmore VORTAC 056° radial extending from the 4.2-mile radius of Ardmore Municipal Airport to 8.5 miles southwest of the airport, and within 1 mile each side of the 315° bearing from Ardmore Municipal Airport extending from the 4.2-mile radius of the airport to 5.3 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW OK E5 Ardmore, OK [Amended]

Ardmore Municipal Airport, OK
(Lat. 34°18′15″ N., long. 97°01′14″ W.)
Ardmore VORTAC
(Lat. 34°12′42″ N., long. 97°10′06″ W.)
Ardmore Downtown Executive Airport, OK
(Lat. 34°08′49″ N., long. 97°07′22″ W.)

That airspace extending upward from the 700 feet above the surface within a 6.8-mile radius of Ardmore Municipal Airport, and within 1.1 miles each side of the 315° bearing from the airport extending from the 6.8-mile radius to 6.9 miles northwest of the airport, and within a 6.5 mile radius of Ardmore Downtown Executive Airport, and within 8 miles west and 4 miles east of the 329° radial of the Ardmore VORTAC extending from the 6.5-mile radius to 16 miles northwest of the VORTAC.

Issued in Fort Worth, Texas, on November 9, 2011.

Gail L. Kasson,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–30531 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0608; Airspace Docket No. 11–ASW–7]

Amendment of Class E Airspace; Winters, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for Winters, TX. Decommissioning of the Winters non-directional beacon (NDB) and cancellation of the NDB Standard Instrument Approach Procedure (SIAP) at Winters Municipal Airport, Winters, TX, as well as the addition of new area navigation (RNAV) SIAPs, has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On August 26, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Winters, TX, reconfiguring controlled airspace at Winters Municipal Airport (76 FR 53354) Docket No. FAA–2011–0608. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace extending upward from 700 feet above the surface for the Winters, TX area. Decommissioning of the Winters NDB and cancellation of the NDB approach at Winters Municipal Airport, as well as the creation of new RNAV standard instrument approach procedures, has made reconfiguration of the airspace necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace at Winters Municipal Airport, Winters, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ASW TX E5 Winters, TX [Amended]

Winters Municipal Airport, TX
(Lat. 31°56′50″ N., long. 99°59′09″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Winters Municipal Airport, and

within 2 miles each side of the 000° bearing from the airport extending from the 6.3-mile radius to 9.2 miles north of the airport.

Issued in Fort Worth, Texas, on November 9, 2011.

Gail L. Kasson,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–30533 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0498; Airspace Docket No. 11–ASW–5]

Amendment of Class E Airspace; Alice, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E airspace for the Alice, TX, area. Cancellation of all standard instrument approach procedures at Old Hoppe Place Airport, Agua Dulce, TX, has made this action necessary to enhance the safety and management of Instrument Flight Rule (IFR) operations in the Alice, TX, area. Also, the geographic coordinates for the remaining airports and a navigation aid are updated.

DATES: *Effective date:* 0901 UTC, February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On August 26, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Alice, TX, reconfiguring controlled airspace at Old Hoppe Place Airport (76 FR 53352) Docket No. FAA–2011–0498. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by amending Class E airspace for the Alice, TX area. Controlled airspace extending upward from 700 feet above the surface is being removed at Old Hoppe Place Airport, Agua Dulce, TX, due to the cancellation of all standard instrument approach procedures at the airport. This action is necessary for the safety and management of IFR operations in the Alice, TX, area. Also, the geographic coordinates for Alice International Airport, Orange Grove NALF, and the Kleberg County non-directional radio beacon (NDB) are updated to coincide with the FAA's aeronautical database.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends controlled airspace in the Alice, TX, area.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011 is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface.

* * * * *

ASW TX E5 Alice, TX [Amended]

Alice International Airport, TX
(Lat. 27°44′27″ N., long. 98°01′37″ W.)
Orange Grove NALF, TX
(Lat. 27°53′49″ N., long. 98°02′37″ W.)
Navy Orange Grove TACAN
(Lat. 27°53′43″ N., long. 98°02′33″W.)
Kingsville, Kleberg County Airport, TX
(Lat. 27°33′03″ N., long. 98°01′51″ W.)
Kleberg County NDB
(Lat. 27°36′23″ N., long. 98°05′09″ W.)

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of Alice International Airport, and within 2 miles each side of the 135° bearing from Alice International Airport extending from the 7.5-mile radius to 9.8 miles southeast of the airport, and within a 7.2-mile radius of Orange Grove NALF, and within 1.6 miles each side of the 129° radial of the Navy Orange Grove TACAN extending from the 7.2-mile radius of Orange Grove NALF to 11 miles southeast of Orange Grove NALF, and within 1.5 miles each side of the 320° radial of the Navy Orange Grove TACAN extending from the 7.2-mile radius of Orange Grove NALF to 9.7 miles northwest of Orange Grove NALF, and within a 6.5-mile radius of Kleberg County Airport, and within 4 miles east and 8 miles west of the 306° bearing extending from the Kleberg County NDB to 14.4 miles northwest of the airport, excluding that airspace within the Corpus Christi, TX, Class E airspace area.

Issued in Fort Worth, Texas, on November 9, 2011.

Gail L. Kasson,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–30532 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0497; Airspace Docket No. 11–ASW–4]

Establishment of Class E Airspace; Nashville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace for Nashville, AR, to accommodate new Area Navigation (RNAV) Standard Instrument Approach Procedures at Howard County Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rule (IFR) operations at the airport.

DATES: *Effective date:* 0901 UTC, February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone (817) 321–7716.

SUPPLEMENTARY INFORMATION:

History

On August 26, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking to amend Class E airspace for Nashville, AR, creating additional controlled airspace at Howard County Airport (76 FR 53359) Docket No. FAA–2011–0497. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) Part 71 by creating additional Class E airspace extending upward from 700 feet above the surface for new standard instrument approach procedures at Howard County Airport, Nashville, AR. This action is necessary for the safety and management of IFR operations at the airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes controlled airspace for Howard County Airport, Nashville, AR.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, and effective September 15, 2011, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW AR E5 Nashville, AR [New]

Howard County Airport, AR
(Lat. 33°59′48″ N., long. 93°50′18″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Howard County Airport.

Issued in Fort Worth, Texas, on November 9, 2011.

Gail L. Kasson,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2011–30570 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2011–0766; Airspace Docket No. 11–AEA–19]

Establishment of Class E Airspace; Danville Airport, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Danville, PA, to accommodate new Area Navigation (RNAV) Global Positioning System (GPS) Standard Instrument Approach Procedures at Danville Airport. This action enhances the safety and management of Instrument Flight Rules (IFR) operations at the airport. This action also corrects the airspace designation and makes a minor adjustment to the geographic coordinates of the airport.

DATES: Effective 0901 UTC, February 9, 2012. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

History

On August 31, 2011, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace at Danville, PA (76 FR 54155). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received. Subsequent to publication, the FAA found the airspace designation to be incomplete, and the geographic coordinates needed to be adjusted; this rule makes the adjustments. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9V dated August 9, 2011, and effective September 15, 2011, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to Title 14, Code of Federal Regulations (14 CFR) part 71 establishes Class E airspace extending upward from 700 feet above the surface to support new RNAV (GPS) standard instrument approach procedures developed at Danville Airport, Danville, PA. This action also corrects the airspace designation from AEA PA E5 Danville, PA to AEA PA E5 Danville Airport, PA, and adjusts the geographic coordinates of the airport to be in concert with the FAAs aeronautical database. This enhances the safety and management of IFR operations at the airport. Except for editorial changes, and the changes noted above, this action is the same as that proposed in the NPRM.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current, is non-controversial and unlikely to result in adverse or negative comments. It, therefore, (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in subtitle VII, part A, subpart I, section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it establishes Class E airspace at Danville Airport, Danville, PA.

Lists of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9V, Airspace Designations and Reporting Points, dated August 9, 2011, effective September 15, 2011, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AEA PA E5 Danville Airport, PA [New]

Danville Airport, PA

(Lat. 40°56′54″ N., long. 76°38′38″ W.)

That airspace extending upward from 700 feet above the surface within a 10.7-mile radius of Danville Airport.

Issued in College Park, Georgia, on November 17, 2011.

Mark D. Ward,

Manager, Operations Support Group, Eastern Service Center, Air Traffic Organization.

[FR Doc. 2011–30535 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 232

[Release Nos. 33–9281; 34–65803; 39–2481; IC–29868]

Adoption of Updated EDGAR Filer Manual

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (the Commission) is adopting revisions to the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) Filer Manual to reflect updates to the EDGAR system. The revisions are being made primarily to support the updates to submission form types ABS–15G and ABS–15G/A; to support changes in XBRL validations for filings containing Exhibit 101 documents; to update the OMB information on EDGARLite Form TA–W; and to add a new applicant type to the Form ID. The EDGAR system is scheduled to be upgraded to support this functionality on November 21, 2011.

The filer manual is also being revised to address changes previously made in EDGAR.

DATES: *Effective Date:* November 29, 2011. The incorporation by reference of the EDGAR Filer Manual is approved by the Director of the Federal Register as of November 29, 2011.

FOR FURTHER INFORMATION CONTACT: In the Division of Corporation Finance, for questions concerning submission form types ABS–15G and ABS–15G/A contact Heather Mackintosh, Office of Information Technology, at (202) 551–3600; in the Division of Trading and Markets for questions regarding new Form ID applicant type and OMB expiration date for Forms TA–W contact Catherine Moore, Special Counsel, Office of Clearance and Settlement, at (202) 551–5718; in the Division of Risk, Strategy, and Financial Innovation for questions concerning XBRL validation requirements contact Walter Hamscher, at (202) 551–5397; and in the Office of Information Technology, contact Rick Heroux, at (202) 551–8800.

SUPPLEMENTARY INFORMATION: We are adopting an updated EDGAR Filer Manual, Volume I and Volume II. The Filer Manual describes the technical formatting requirements for the preparation and submission of electronic filings through the EDGAR

system.[1] It also describes the requirements for filing using EDGARLink Online and the Online Forms/XML Web site.

The revisions to the Filer Manual reflect changes within Volume I entitled EDGAR Filer Manual, Volume I: ''General Information,'' Version 11 (November 2011) and Volume II entitled EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 18 (November 2011). The updated manual will be incorporated by reference into the Code of Federal Regulations.

The Filer Manual contains all the technical specifications for filers to submit filings using the EDGAR system. Filers must comply with the applicable provisions of the Filer Manual in order to assure the timely acceptance and processing of filings made in electronic format.[2] Filers may consult the Filer Manual in conjunction with our rules governing mandated electronic filing when preparing documents for electronic submission.[3]

The EDGAR system will be upgraded to Release 11.3 on November 21, 2011 and will introduce the following changes: EDGAR will be upgraded to support updates to submission form type ABS–15G and ABS–15G/A based upon final Rule 15Ga–1.[4] ABS–15G Item 1.02 will require start and end date of reporting period and also a file number if the securitizer has previously filed an ABS–15G under Item 1.01 for the same Asset Class as the report. ABS–15G Item 1.02 will have an option to indicate if the securitizer has no activity to report for the quarterly period pursuant to Rule 15Ga–1(c)(2)(i) and/or for the annual period pursuant to Rule 15Ga–1(c)(2)(ii). ABS–15G Item 1.01 will have an option to indicate that the securitizer has no activity to report for the initial period pursuant to Rule 15Ga–1(c)(1). Additionally, EDGAR will allow submission of multiple ABS–15G Item 1.01 submissions per CIK.

The validation rules processed for filings containing EX–101.INS XBRL documents will be changed to require all elements used to have US English standard labels and all non-English non-empty facts to have corresponding US English variants.

Submission form types 10–KT, 10–KT/A, 10–QT, 10–QT/A and POS AM can now be filed with XBRL documents. EX–101.INS XBRL documents included within POS AM submissions can have the element dei:DocumentType with content equal to F–1, F–3, F–4, F–9, F–10, S–1, S–3, S–4, S–11, POS AM or ''Other''.

The OMB expiration date on EDGARLite Form TA–W (Notice of Withdrawal from Registration as Transfer Agent) will be updated to July 31, 2014.

New applicant type 'Municipal Advisor' will be available for the filers to select when completing the Form ID to apply for EDGAR access codes. In addition, applicant types 'Investment Company (or insurance product separate account) or Business Development Company' and 'Non-Investment Company Applicant under the 1940 Act' will be updated to 'Investment Company, Business Development Company or Insurance Company Separate Account' and 'Non-Investment Company Applicant under the Investment Company Act of 1940' respectively.

There will be a minor .dot release, EDGAR Release 11.3.1, that will be deployed after Release 11.3 to implement additional XBRL validation changes. On December 12, 2011, the validation rules processed for filings containing EX–101.INS XBRL documents will be changed to require four digit xs:gYear values and will allow distinct values for all outstanding common share classes instead of requiring a single value for dei:Entity CommonStockSharesOutstanding of annual financial statements. For EX–101.SCH documents, the xsd:complex Type, or xsd:simpleType name attribute in UTF–8 must be less than 200 bytes of UTF–8 text. The content for targetnamespace, roleURI or arcroleURI attribute in UTF–8 must not exceed 255 bytes in length. For EX–101.INS documents, the local name part of the content for xbrli:measure:element must be less than 200 bytes of text.

The filer manual is also being revised to address minor software changes made previously in EDGAR. Submission form types SC 14N, SC 14N–S and their amendments were made available for use on EDGARLink Online. Form 8–K Item 5.08 (Shareholder Director Nominations) was also made available for use on submission form types 8–K, 8–K12B, 8–K12G3, 8–K15D5 and their amendments.

Submission form types 13F–HR, 13F–HR/A, 13F–NT and 13F–NT/A were updated to accept March 31, June 30, September 30, or December 31 as valid dates for the Period field. A future date will still be not allowed for the Period field.

Along with the adoption of the Filer Manual, we are amending Rule 301 of Regulation S–T to provide for the incorporation by reference into the Code of Federal Regulations of today's revisions. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51.

You may obtain paper copies of the updated Filer Manual at the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Room 1543, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. We will post electronic format copies on the Commission's Web site; the address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.*

Since the Filer Manual relates solely to agency procedures or practice, publication for notice and comment is not required under the Administrative Procedure Act (APA).[5] It follows that the requirements of the Regulatory Flexibility Act[6] do not apply.

The effective date for the updated Filer Manual and the rule amendments is November 29, 2011. In accordance with the APA,[7] we find that there is good cause to establish an effective date less than 30 days after publication of these rules. The EDGAR system upgrade to Release 11.3 is scheduled to become available on November 21, 2011. The Commission believes that establishing an effective date less than 30 days after publication of these rules is necessary to coordinate the effectiveness of the updated Filer Manual with the system upgrade.

Statutory Basis

We are adopting the amendments to Regulation S–T under Sections 6, 7, 8, 10, and 19(a) of the Securities Act of 1933,[8] Sections 3, 12, 13, 14, 15, 23, and 35A of the Securities Exchange Act of 1934,[9] Section 319 of the Trust Indenture Act of 1939,[10] and Sections 8, 30, 31, and 38 of the Investment Company Act of 1940.[11]

[1] We originally adopted the Filer Manual on April 1, 1993, with an effective date of April 26, 1993. Release No. 33–6986 (April 1, 1993) [58 FR 18638]. We implemented the most recent update to the Filer Manual on August 5, 2011. *See* Release No. 33–9246 (August 1, 2011) [76 FR 47438].

[2] *See* Rule 301 of Regulation S–T (17 CFR 232.301).

[3] *See* Release No. 33–9246 (August 1, 2011) [76 FR 47438] in which we implemented EDGAR Release 11.2. For additional history of Filer Manual rules, please see the cites therein.

[4] See Final Rule Release No. 33–9175, Disclosure for Asset-Backed Securities Required by Section 943 of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

[5] 5 U.S.C. 553(b).

[6] 5 U.S.C. 601–612.

[7] 5 U.S.C. 553(d)(3).

[8] 15 U.S.C. 77f, 77g, 77h, 77j, and 77s(a).

[9] 15 U.S.C. 78c, 78*l,* 78m, 78n, 78o, 78w, and 78*ll.*

[10] 15 U.S.C. 77sss.

[11] 15 U.S.C. 80a–8, 80a–29, 80a–30, and 80a–37.

List of Subjects in 17 CFR Part 232

Incorporation by reference, Reporting and recordkeeping requirements, Securities.

Text of the Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 1. The authority citation for Part 232 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.;* and 18 U.S.C. 1350.

* * * * *

■ 2. Section 232.301 is revised to read as follows:

§ 232.301 EDGAR Filer Manual.

Filers must prepare electronic filings in the manner prescribed by the EDGAR Filer Manual, promulgated by the Commission, which sets out the technical formatting requirements for electronic submissions. The requirements for becoming an EDGAR Filer and updating company data are set forth in the updated EDGAR Filer Manual, Volume I: ''General Information,'' Version 11 (November 2011). The requirements for filing on EDGAR are set forth in the updated EDGAR Filer Manual, Volume II: ''EDGAR Filing,'' Version 18 (November 2011). Additional provisions applicable to Form N–SAR filers are set forth in the EDGAR Filer Manual, Volume III: ''N–SAR Supplement,'' Version 2 (August 2011). All of these provisions have been incorporated by reference into the Code of Federal Regulations, which action was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. You must comply with these requirements in order for documents to be timely received and accepted. You can obtain paper copies of the EDGAR Filer Manual from the following address: Public Reference Room, U.S. Securities and Exchange Commission, 100 F Street NE., Room 1543, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Electronic copies are available on the Commission's Web site. The address for the Filer Manual is *http://www.sec.gov/info/edgar.shtml.* You can also inspect the document at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Dated: November 22, 2011.

By the Commission.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–30591 Filed 11–28–11; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

RIN 1205–AB61

Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program; Delay of Effective Date

AGENCY: Employment and Training Administration, Department of Labor.

ACTION: Final rule; delay of effective date.

SUMMARY: The Department of Labor (Department) is delaying the effective date of the Wage Methodology for the Temporary Non-agricultural Employment H–2B Program; Final Rule, 76 FR 3452, Jan. 19, 2011, (the Wage Rule) to January 1, 2012 in response to recently enacted legislation that prohibits any funds from being used to implement administer, or enforce the Wage Rule before January 1, 2012. The Wage Rule revised the methodology by which we calculate the prevailing wages to be paid to H–2B workers and United States (U.S.) workers recruited in connection with a temporary labor certification for use in petitioning the Department of Homeland Security to employ a nonimmigrant worker in H–2B status.

DATES: The effective date of the rule amending 20 CFR part 655, published at 76 FR 45667, August 1, 2011, as further amended at 76 FR 59896, September 28, 2011, is delayed until January 1, 2012.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, ETA, U.S. Department of Labor, 200 Constitution Avenue NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–(877) 889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The Department of Labor (Department) published the Wage Methodology for the Temporary Non-agricultural Employment H–2B Program; Final Rule (the Wage Rule) on January 19, 2011, 76 FR 3452. The Wage Rule revised the methodology by which we calculate the prevailing wages to be paid to H–2B workers and United States (U.S.) workers recruited in connection with a temporary labor certification for use in petitioning the Department of Homeland Security to employ a nonimmigrant worker in H–2B status. The Department originally set the effective date of the Wage Rule for January 1, 2012. However, due to a court ruling that invalidated the January 1, 2012 effective date of the Wage Rule,[1] we issued a Notice of Proposed Rulemaking (NPRM) on June 28, 2011, which proposed that the Wage Rule take effect 60 days from the date of publication of a final rule resulting from the NPRM. 76 FR 37686, June 28, 2011. After a period of public comment, we published a Final Rule on August 1, 2011, which set the new effective date for the Wage Rule of September 30, 2011 (the Effective Date Rule).

Both the Wage Rule and the Effective Date Rule recently were challenged in two separate lawsuits [2] seeking to bar their implementation. In consideration of the two pending challenges to the Wage Rule and its new effective date, and the possibility that the litigation will be transferred to another court,[3] the Department issued a final rule, 76 FR 59896, September 28, 2011, postponing the effective date of the Wage Rule from September 30, 2011, until November 30, 2011, in accordance with the Administrative Procedure Act, 5 U.S.C. 705.

On November 18, 2011, President Obama signed into law the Consolidated and Further Continuing Appropriations Act, 2012, which provides that ''[n]one of the funds made available by this or any other Act for fiscal year 2012 may be used to implement, administer, or

[1] *CATA* v. *Solis,* Dkt. No. 119, 2011 WL 2414555 (E.D. Pa. June 16, 2011).

[2] See *Louisiana Forestry Association, Inc., et al. (LFA)* v. *Solis, et al.,* Civil Docket No. 11–1623 (WD LA, Alexandria Division); and *Bayou Lawn & Landscape Services, et al. (Bayou)* v. *Solis, et al.,* Civil Docket No. 11–445 (ND FL, Pensacola Division).

[3] On September 19, 2011, the plaintiffs in the *CATA* litigation moved to intervene in the *LFA* litigation, and also moved to transfer venue over the litigation to the Eastern District of Pennsylvania, the court in which the *CATA* case remains pending. The plaintiffs' motion to intervene was granted by the U.S. District Court in the Western District of Louisiana on Sept. 22, 2011, but its motion before the U.S. District Court in the Northern District of Florida remains pending.

enforce, prior to January 1, 2012 the [Wage Rule].'' Public Law 112–55, Div. B, Title V, § 546 (Nov. 18, 2011). While the Act prevents the expenditure of funds to implement, administer, or enforce the Wage Rule before January 1, 2012, it does not prohibit the Wage Rule from going into effect, which is scheduled to occur on November 30, 2011. When the Wage Rule goes into effect, it will supersede and make null the prevailing wage provisions at 20 CFR 655.10(b) of the Department's existing H–2B regulations, which were promulgated under Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes; Final Rule, 73 FR 78020, Dec. 19, 2008 (the H–2B 2008 Rule). Allowing the Wage Rule to go into effect as planned on November 30, 2011, would therefore render the Department unable to issue prevailing wage determinations under the 2008 H–2B Rule, because it would no longer exist.

Although dates of need are not included in prevailing wage determination requests, it is possible that some of the pending requests with the Department would cover work to be performed before January 1, 2012, and accordingly, the wage would need to be determined in accordance with the 2008 H–2B Rule. However, if the Wage Rule were to go into ''effect'' on November 30, 2011, we would be legally precluded during the month of December 2011 from issuing prevailing wage determinations under the H–2B 2008 Rule. This result would be directly contrary to Congressional intent as expressed in its Conference Report that ''[i]n making prevailing wage determinations for the H–2B nonimmigrant visa program for employment prior to January 1, 2012, the conferees direct the Secretary of Labor to continue to apply the [H–2B 2008 Rule]'' H.R. Rept. No. 112–284 (Conf. Rep.), 157 Cong. Rec. H7528 (Nov. 14, 2011). Because of the imminent threat that the Department will be unable to issue prevailing wage determinations for work to be performed before January 1, 2012, the Department considers this situation an emergency warranting the publication of a final rule under the good cause exception of the Administrative Procedure Act. See 5 U.S.C. 553(b)(B) and 553(d)(3). Accordingly, we must further delay the effective date of the Wage Rule to January 1, 2012.

Based on Congressional intent and to avoid an operational hiatus during the month of December 2011, the Department finds good cause to adopt this rule, effective immediately, and without prior notice and comment. See 5 U.S.C. 553(b)(B) and 553(d)(3). We believe that immediate action must be taken so that the employment of H–2B workers will not adversely affect U.S. workers similarly employed, and that employers are able to obtain a temporary non-agricultural workforce where there are no U.S. workers available for the job. The Department is simply effectuating the intent of Congress that the H–2B 2008 Rule should continue to govern prevailing wage determinations for employment before January 1, 2012. As such, a delay in promulgation of this rule past the date of publication would be impracticable and unnecessary and disrupt the program to the detriment of the public interest.

Signed at Washington, DC, November 23, 2011.

Jane Oates,

Assistant Secretary for Employment and Training.

[FR Doc. 2011–30781 Filed 11–25–11; 11:15 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Employment and Training Administration

Wage and Hour Division

20 CFR Part 655

RIN 1205–AB61

Wage Methodology for the Temporary Non-Agricultural Employment H–2B Program; Delay of Effective Date; Impact on Prevailing Wage Determinations

AGENCY: Employment and Training Administration, Wage and Hour Division, Department of Labor.

ACTION: Guidance.

SUMMARY: The Department of Labor (Department) recently delayed the effective date of the Wage Methodology for Temporary Non-agricultural Employment H–2B Program Final Rule, 76 FR 3452, Jan. 19, 2011 (the Wage Rule) to January 1, 2012. This notice provides guidance to those employers who have received from the Department either a supplemental or dual prevailing wage determinations based on a previous effective date of the new prevailing wage methodology. This guidance is intended to clarify the wage payment requirements for employers participating in the H–2B Temporary Non-agricultural program.

DATES: This guidance is effective November 29, 2011.

FOR FURTHER INFORMATION CONTACT: William L. Carlson, Ph.D., Administrator, Office of Foreign Labor Certification, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room C–4312, Washington, DC 20210; Telephone (202) 693–3010 (this is not a toll-free number). For further information concerning the Wage and Hour Division, contact Mary Ziegler, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, 200 Constitution Avenue NW., Room S–3502, Washington, DC 20210; Telephone (202) 693–0406 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY calling the toll-free Federal Information Relay Service as 1–(877) 889–5627 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The Department published the Wage Rule on January 19, 2011, 76 FR 3452. The Wage Rule revised the methodology by which we calculate the prevailing wage to be paid to H–2B workers and United States (U.S.) workers recruited in connection with a temporary labor certification used in petitioning the Department of Homeland Security to employ a nonimmigrant worker in H–2B status. The Department originally set the effective date of the Wage Rule for January 1, 2012. Due to a court ruling that invalidated the January 1, 2012 effective date of the Wage Rule,[1] we issued a Notice of Proposed Rulemaking (NPRM) on June 28, 2011, which proposed that the Wage Rule take effect 60 days from the date of publication of a final rule resulting from the NPRM. 76 FR 37686, Jun. 28, 2011. We published a Final Rule on August 1, 2011, which set the new effective date of September 30, 2011 for the Wage Rule (the Effective Date Rule). In anticipation of the effective date of the Wage Rule, the Department issued supplemental prevailing wage determinations to those employers who had been granted certification for an H–2B application where work would be performed on or after September 30, 2011.

Both the Wage Rule and the Effective Date Rule were challenged in two separate lawsuits [2] seeking to bar their

[1] *CATA* v. *Solis,* Dkt. No. 119, 2011 WL 2414555 (E.D. Pa. June 16, 2011).

[2] See *Louisiana Forestry Association, Inc., et al. (LFA)* v. *Solis, et al,* Civil Docket No. 11–1623 (WD LA, Alexandria Division); and *Bayou Lawn & Landscape Services, et al (Bayou)* v. *Solis, et al,*

Continued

implementation. In consideration of the two pending challenges to the Wage Rule and its new effective date, and the possibility that the litigation may be transferred to another court,[3] the Department issued a **Federal Register** notice, 76 FR 59896, Sep. 28, 2011, postponing the effective date of the rule from September 30, 2011, until November 30, 2011, in accordance with the Administrative Procedure Act, 5 U.S.C. 705. Following the postponement of the effective date to November 30, 2011, and in anticipation of the new effective date, the Office of Foreign Labor Certification (OFLC) issued participating employers two simultaneous wage determinations for work to be potentially performed before and after the new effective date of the Wage Rule. The first determination was based on the former regulations that applied up until November 30, and the second determination was based on the new prevailing wage methodology set forth in the Wage Rule, that was to be effective for work performed on and after November 30, 2011.

On November 18, 2011, 2011, the President signed into law the Consolidated and Further Continuing Appropriations Act, 2012, H.R. 2112, 112th Cong. (2011) (enacted). The legislation contains language prohibiting the Department from implementing, administering, or enforcing, prior to January 1, 2012, the Wage Rule. While the Act prevents the expenditure of funds to implement, administer, or enforce the Wage Rule before January 1, 2012, it does not prohibit the Wage Rule from going into effect, which is scheduled to occur on November 30, 2011. When the Wage Rule goes into effect, it will supersede and nullify the prevailing wage provisions at 20 CFR 655.10(b) of the Department's existing H–2B regulations, which were promulgated under *Labor Certification Process and Enforcement for Temporary Employment in Occupations Other Than Agriculture or Registered Nursing in the United States (H–2B Workers), and Other Technical Changes; Final Rule,* 73 FR 78020, Dec. 19, 2008 (the H–2B 2008 Rule).

Since dates of need are not included in prevailing wage determination requests, it is possible that some of the pending requests with the Department would cover work to be performed before January 1, 2012, and accordingly, that wage would need to be determined in accordance with the 2008 H–2B Rule. However, if the Wage Rule were to go into ''effect'' on November 30, 2011, we would be legally precluded during the month of December 2011 from issuing prevailing wage determinations under the H–2B 2008 Rule. This result would be directly contrary to Congressional intent as expressed in the Conference Report, ''[i]n making prevailing wage determinations for the H–2B nonimmigrant visa program for employment prior to January 1, 2012, the conferees direct the Secretary of Labor to continue to apply the [H–2B 2008 Rule].'' H.R. Rept. No. 112–284 (Conf. Rep.), 157 Cong. Rec. H7528 (Nov. 14, 2011). Based on Congressional intent and to avoid an operational hiatus during the month of December 2011, the Department has published a Final Rule extending the effective date of the Wage Rule to apply to work performed on and after January 1, 2012. See the final rule delaying the effective date of the H–2B Wage Rule, published elsewhere in this issue of the **Federal Register**.

In light of the recent postponement of the effective date of the Wage Rule until January 1, 2012, the Department is hereby providing notice that the wage determinations previously issued under the Wage Rule will not be effective until January 1, 2012, and will apply only to work performed on or after January 1, 2012. Any employer who has received an H–2B prevailing wage determination in anticipation of either the September 30, 2011 or November 30, 2011 effective dates is not required to pay, and the Department's Wage and Hour Division will not enforce, the wage provided in the prevailing wage determination issued under the Wage Rule for any work performed by H–2B workers or U.S. workers recruited in connection with the H–2B application process until January 1, 2012. Employers are expected to continue to pay at least the prevailing wage as provided in a prevailing wage determination issued under the 2008 H–2B Rule for any work performed before January 1, 2012.

Further, employers who received a supplemental H–2B prevailing wage determination, or a prevailing wage determination issued under the Wage Rule, must pay at least that wage to any H–2B worker and any U.S. worker recruited in connection with the labor certification for work performed on or after January 1, 2012.

Signed at Washington, DC, this 23rd of November 2011.

Jane Oates,

Assistant Secretary for Employment and Training.

Nancy Leppink,

Deputy Administrator, Wage and Hour Division.

[FR Doc. 2011–30745 Filed 11–25–11; 11:15 am]

BILLING CODE 4510–FP–P

Civil Docket No. 11–445 (ND FL, Pensacola Division).

[3] On September 19, 2011, the plaintiffs in the *CATA* litigation moved to intervene in the *LFA* litigation, and also moved to transfer venue over the litigation to the Eastern District of Pennsylvania, the court in which the *CATA* case remains pending. The plaintiffs' motion to intervene was granted by the U.S. District Court in the Western District of Louisiana on Sept. 22, 2011, but its similar motion in the *Bayou* litigation before the U.S. District Court in the Northern District of Florida remains pending.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2011–1034]

Drawbridge Operation Regulations; Saugus River, Lynn and Revere, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the General Edwards Bridge at mile 1.7, across the Saugus River between Lynn and Revere, Massachusetts. The deviation is necessary to facilitate scheduled bridge rehabilitation. This deviation allows the bridge to open upon a 48 hour advance notice during the rehabilitation period.

DATES: This deviation is effective from November 21, 2011 through April 24, 2012.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket USCG–2011–1034 and are available online at *http://www.regulations.gov,* inserting USCG–2011–1034 in the ''Keyword'' and then clicking ''Search''. They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. John W. McDonald, Project Officer, First Coast Guard District, *john.w.mcdonald@uscg.mil,* or telephone (617) 223–8364. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

The General Edwards Bridge, across the Saugus River at mile 1.7 between Lynn and Revere, Massachusetts, has a vertical clearance in the closed position of 27 feet at mean high water and 36 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.618(b).

The waterway users are recreational vessels of various sizes. The bridge opened only 9 times between November and April since 2002 and there were no openings between November and April in 2010. During the winter months the bridge rarely opens since the recreational vessels that transit this waterway are normally in winter storage.

The owner of the bridge, Massachusetts Department of Transportation, requested a temporary deviation from the regulations to help facilitate rehabilitation at the bridge.

Under this temporary deviation the General Edwards Bridge shall operate as follows: From November 21, 2011 through April 24, 2012, the draw shall open after at least a 48 hour advance notice is given by calling the Massachusetts DOT Highway Operations Center at 1–(800) 227–0608. Vessels that can pass under the bridge in the closed position may do so at any time.

The Coast Guard believes that this temporary deviation should meet the reasonable needs of navigation because the mariners that normally use this bridge are recreational vessels that do not operate during the winter months when this deviation will be in effect.

In accordance with 33 CFR 117.35(e), the bridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 16, 2011.

Gary Kassof,

Bridge Program Manager, First Coast Guard District.

[FR Doc. 2011–30720 Filed 11–28–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2010–0939]

RIN 1625–AA00

Safety Zone; M/V DAVY CROCKETT, Columbia River

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The U.S. Coast Guard is extending the enforcement period of a safety zone established on the waters of the Columbia River surrounding the remaining cofferdam at the M/V DAVY CROCKETT removal sight at approximate river mile 117. The original safety zone was established on January 28, 2011. The safety zone continues to be necessary to help ensure the safety of the response workers and maritime public while they conduct the removal of the cofferdam. All persons and vessels are prohibited from entering or remaining in the safety zone unless authorized by the Captain of the Port, Columbia River or his designated representative.

DATES: This rule is effective from November 29, 2011 through November 30, 2011. This rule is effective with actual notice for purposes of enforcement on November 1, 2011. This rule will remain in effect through November 30, 2011.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2010–0939 and are available online by going to *http://www.regulations.gov*, inserting USCG–2010–0939 in the ''Keyword'' box, and then clicking ''Search.'' They are also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or email BM1 Silvestre Suga, Waterways Management Division, Marine Safety Unit Portland, Coast Guard; telephone (503) 240–9319, email *Silvestre.G.Suga@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because to do so would be contrary to public interest. The safety zone remains urgently necessary to help ensure the safety of the response workers and the maritime public due to the ongoing cofferdam removal operations and site cleanup.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because the safety zone continues to be immediately necessary to help ensure the safety of the response workers and the maritime public due to the cofferdam removal operations. Additionally, the consequences of the reduced publication notice is diminished by the fact that a safety zone has already been in place at this location.

Background and Purpose

The remaining cofferdam at the M/V DAVY CROCKETT removal site is located on the Washington State side of the Columbia River at approximately river mile 117. The Coast Guard, other state and federal agencies, and federal contractors are conducting cofferdam removal operations. The cofferdam removal operations require a minimal wake in the vicinity of the cofferdam to help ensure the safety of response workers. Only authorized persons and/or vessels can be safely allowed in the worksite cleanup area.

A 300 ft safety zone is necessary to keep vessels clear of the cofferdam removal operations. The previous 300 ft safety zone will expire on October 31, 2011.

Discussion of Rule

The Coast Guard is extending the enforcement of the safety zone created by this rule until November 30, 2011. The safety zone will cover all waters of the Columbia River encompassed within the following four points: point one at 45°34′59.74″ N/122°28′35.00″ W on the Washington bank of the Columbia River then proceeding into the river to point two at 45°34′51.42″ N/122°28′35.47″ W, then proceeding upriver to the third point at 45°34′51.02″ N/122°28′07.32″ W, then proceeding to the shoreline to the fourth point on the Washington Bank at 45°34′56.06″ N/122°28′07.36″ W, then back along the shoreline to point one. Geographically, this encompasses all the waters within an area starting at approximately 300 ft upriver from the cofferdam removal area extending to 300 ft abreast of the cofferdam removal area and then ending

300 ft down river of the cofferdam removal area.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard has made this determination based on the fact that the safety zones created by this rule will not significantly affect the maritime public because the areas covered are limited in size and/or have little commercial or recreational activity. In addition, vessels may enter the safety zones with the permission of the Captain of the Port, Columbia River or his designated representative.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities some of which may be small entities: the owners and operators of vessels intending to operate in the areas covered by the safety zones created in this rule. The safety zones will not have a significant economic impact on a substantial number of small entities because the areas covered are limited in size. In addition, vessels may enter the safety zones with the permission of the Captain of the Port, Columbia River or his designated representative.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–(888) 734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have Tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security

Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction. This rule involves the creation of safety zones. An environmental analysis checklist and a categorical exclusion determination will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.T13–175 to read as follows:

§ 165.T13–175 Safety Zone; M/V DAVY CROCKETT, Columbia River

(a) *Location:* The following area is a safety zone:

(1) All waters of the Columbia River encompassed within the following four points: point one at 45°34′59.74″ N/122°28′35.00″ W on the Washington bank of the Columbia River then proceeding into the river to point two at 45°34′51.42″ N/122°28′35.47″ W, then proceeding upriver to the third point at 45°34′51.02″ N/122°28′07.32″ W, then proceeding to the shoreline to the fourth point on the Washington Bank at 45°34′56.06″ N/122°28′07.36″ W, then back along the shoreline to point one. Geographically this encompasses all the waters within an area starting at approximately 300 ft upriver from the cofferdam removal area extending to 300 ft abreast of the cofferdam removal area and then ending 300 ft down river of the cofferdam removal area.

(2) [Reserved]

(b) *Regulations.* In accordance with the general regulations in 33 CFR Part 165, Subpart C, no person may enter or remain in the safety zone created in this section or bring, cause to be brought, or allow to remain in the safety zone created in this section any vehicle, vessel, or object unless authorized by the Captain of the Port, Columbia River or his designated representative.

(c) *Enforcement Period.* The safety zone created in this section will be in effect from November 1, 2011 through November 30, 2011 unless cancelled sooner by the Captain of the Port, Columbia River.

Dated: October 28, 2011.

B.C. Jones,

Captain, U.S. Coast Guard, Captain of the Port, Columbia River.

[FR Doc. 2011–30697 Filed 11–28–11; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 110207103–1113–01]

RIN 0648–AY65

Fisheries of the Exclusive Economic Zone Off Alaska; Revisions to Pacific Cod Fishing in the Parallel Fishery in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to limit access of Federally permitted pot and hook-and-line catcher/processors (C/Ps) to the Pacific cod fishery in Alaska State waters within 3 nautical miles of shore adjacent to the Bering Sea and Aleutian Islands management area (BSAI). The affected fishery is commonly known as the ''parallel'' fishery. The parallel fishery is managed by the State of Alaska concurrent with the Federal pot and hook-and-line fishery for Pacific cod in the BSAI. This rule limits access by Federally permitted vessels to the parallel fishery for Pacific cod in three ways. First, it requires an owner of a Federally permitted pot or hook-and-line C/P vessel used to catch Pacific cod in the State of Alaska parallel fishery to be issued the same endorsements on his or her Federal fisheries permit (FFP) or license limitation program (LLP) license as currently are required for catching Pacific cod in the Federal waters of the BSAI. Second, it provides that the owner of a pot or hook-and-line C/P vessel who surrenders an FFP will not be reissued a new FFP for that vessel within the 3-year term of the permit. Third, it requires an operator of any Federally permitted pot or hook-and-line C/P vessel used to catch Pacific cod in the parallel fishery to comply with the same seasonal closures of Pacific cod that apply in the Federal fishery. These three measures are necessary to limit some C/Ps from catching a greater amount of Pacific cod in the parallel fishery than has been allocated to their sector from the BSAI total allowable catch. Maintaining Pacific cod catch amounts within BSAI sector allocations also will reduce the potential for shortened Pacific cod seasons for C/Ps in the Federal fishery. These three measures will improve the effectiveness of NMFS' catch accounting and monitoring requirements on vessels participating in the parallel fishery. This action is intended to promote the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area, the Magnuson–Stevens Fishery Conservation and Management Act, and other applicable laws.

DATES: Effective January 1, 2012.

ADDRESSES: Electronic copies of this rule, the Environmental Assessment (EA), Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) may be obtained from the Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted by mail to NMFS, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Ellen Sebastian, Records Officer; in person at NMFS, Alaska Region, 709 West 9th Street, Room 420A, Juneau, Alaska; and by email to *OIRA_Submission@omb.eop.gov,* or by fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Jeff Hartman, (907) 586–7442.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fisheries in the exclusive economic zone (EEZ) of the Bering Sea and Aleutian Islands management area (BSAI) under the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The North Pacific Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C.

1801 *et seq*. Regulations implementing the FMP appear at 50 CFR part 679. General regulations that pertain to U.S. fisheries appear at subpart H of 50 CFR part 600.

Background

Federal groundfish fisheries in the EEZ from 3 to 200 nm off the coast of Alaska may be opened by NMFS to directed fishing for Pacific cod and other groundfish species. The Commissioner of the Alaska Department of Fish and Game (ADF&G) may open groundfish fisheries in State of Alaska waters through emergency orders that parallel the openings and management measures in the Federal groundfish fishery.

To participate in Federal fisheries, NMFS requires various permits that authorize or limit access to the Federal groundfish fisheries, such as a Federal fisheries permit (FFP) and a license limitation program (LLP) license. Operators of vessels designated on an FFP are required to comply with many Federal catch monitoring regulations, including observer and recordkeeping and reporting requirements while participating in Federal and parallel fisheries. Operators of vessels designated on an FFP and endorsed with the appropriate species designation on the FFP are required to comply with NMFS Vessel Monitoring Systems (VMS) reporting requirements if they participate in the directed Atka mackerel, Pacific cod, or pollock fisheries in Federal or parallel waters. However, a vessel used to fish exclusively in the State parallel water fisheries is not required to be designated on an FFP and the operator does not need to comply with NMFS observer, VMS, or recordkeeping and reporting requirements. In addition, to participate in a non-trawl directed fishery for Pacific cod as a catcher/processor (C/P) in the Bering Sea (BS) or Aleutian Islands (AI), a vessel also must be designated on an LLP license with an endorsement for Pacific cod in the BS or AI for a C/P using pot or hook-and-line gear. These endorsements on an LLP license are not severable from the license. An LLP license with its associated endorsements may be assigned to a different vessel only once per year.

Some vessel operators fishing for Pacific cod have surrendered or amended endorsements on their FFPs before fishing in the Pacific cod parallel fishery. As a result, they are not subject to NMFS observer, VMS, and recordkeeping and reporting requirements. This compromises the ability of NMFS to collect from the parallel waters Pacific cod fishery data that is necessary for management, compliance monitoring and research of groundfish fisheries and the conservation of marine resources.

Several Federally permitted operators of pot and hook-and-line C/Ps have been participating in the BSAI parallel Pacific cod fishery without being issued the FFP and LLP license endorsements on those permits and licenses that are necessary to participate in the Federal Pacific cod fishery. These vessel operators recently entered the parallel fishery without demonstrating a long-term economic dependence on the Pacific cod fishery. The additional catch of Pacific cod resulting from this activity was circumventing the intended effectiveness of three FMP amendments that were implemented to control access and curtail the excessive competition and fishing effort that had developed in the Pacific cod fishery throughout much of the previous two decades. These three FMP amendments are the BSAI FMP Amendment 67 Pacific cod LLP endorsement (67 FR 18129, April 15, 2002), the BSAI FMP Amendment 85 Pacific cod sector allocations (72 FR 50788, September 4, 2007), and the BSAI hook-and-line C/P sector Pacific cod capacity reduction program (71 FR 57696, September 29, 2006). Catch of Pacific cod taken by the C/Ps that do not have the necessary FFP and LLP license endorsements is deducted by NMFS from the Federal TAC (§ 679.20(a)(7)) and then is not available to other participants in the Federal fisheries Pacific cod sector.

Actions Implemented by Rule

In consideration of the effects of the practices described in the Background section on the allocation of Pacific cod and data quality, NMFS implements the following three revisions to participation of pot or hook-and-line C/Ps in the Pacific cod parallel fishery. These three revisions amend regulations for pot and hook-and-line C/Ps by extending FFP and LLP endorsement requirements that apply in Federal fisheries to the Pacific cod parallel fishery, placing restrictions on the provisions reissuing or amending an FFP, and requiring operators of these pot and hook-and-line C/Ps participating in the State parallel fishery to comply with seasonal closures of Pacific cod in the BSAI.

Endorsements for the State Parallel Fishery

The first of the three revisions broadens the applicability of endorsements on FFPs and LLP licenses in the parallel fishery. The endorsements apply to vessels designated on an FFP that fish for Pacific cod in the parallel fishery, use pot or hook-and-line gear in the parallel fishery, and catch and process Pacific cod in the parallel fishery. This rule amends § 679.7(c)(3) to prohibit a person from using pot or hook-and-line gear on a vessel designated on an FFP to catch and process Pacific cod in the parallel fishery in the BSAI unless:

1. The FFP has a C/P vessel operation endorsement; a pot or hook-and-line gear endorsement; and a BSAI area endorsement; and

2. The LLP license has a C/P vessel operation endorsement; a non-trawl gear endorsement; an Aleutian Islands area endorsement or a Bering Sea area endorsement; and a BSAI C/P Pacific cod hook-and-line or BSAI C/P Pacific cod pot endorsement.

This rule clarifies that under the authority of the Magnuson-Stevens Act, the endorsements listed in 1 and 2 as well as any conditions of these FFP and LLP endorsements apply to owners of Federally permitted pot or hook-and-line C/P vessels fishing for Pacific cod in the parallel fishery.

Reissuing and Amending an FFP

The second revision adds a new paragraph (B) to § 679.4(b)(4)(ii) to provide that, once surrendered, NMFS will not reissue an FFP to the owner of a vessel with a C/P vessel operation, pot or hook-and-line gear type, and BSAI area endorsement during the remainder of the 3-year term of the original FFP. This revision should deter an owner of a C/P using pot or hook-and-line gear in the BSAI from periodically surrendering his or her FFP primarily to avoid NMFS observer, VMS, and recordkeeping and reporting requirements.

This action also adds new paragraph (B) to § 679.4(b)(4)(iii) to prohibit the owner of a vessel named on an FFP with endorsements for C/P vessel operation category, pot or hook-and-line gear, and BSAI area groundfish from amending the FFP by removing the C/P operation, pot or hook-and-line gear, or BSAI area endorsements.

This rule further amends § 679.4(b)(4)(iii) to refer to the ''owner'' of a vessel who applied for and held an FFP rather than to the ''owner or operator.'' The term operator is removed because FFPs may only be issued to vessel owners.

Seasonal Closures

The third revision applies Pacific cod seasonal closure requirements to Federally permitted pot and hook-and-line C/Ps in both Federal and parallel Pacific cod fisheries. The closure

requirements are implemented by adding paragraph (4) to § 679.7(c) to prohibit operators of vessels in the pot or hook-and-line C/P sector that are named on an FFP from fishing for Pacific cod in the parallel fishery once the directed fishery for Pacific cod for their sector is closed in Federal waters. Owners of Federally permitted pot or hook-and-line C/Ps who intend to catch and process Pacific cod in the parallel fishery receive notice from NMFS in the instructions for the FFP and in this rule that any Pacific cod caught by that vessel in the parallel fishery will be deducted from the Federal TAC. This rule is intended to improve enforceability of regulations at § 679.7(c)(3) and (c)(4) by clarifying that the owner of a Federally permitted pot or hook-and-line C/P will be in violation of these regulation prohibiting catching and processing Pacific cod in the parallel fishery during a seasonal closure or without the required FFP and LLP license endorsements.

What the Amendments Accomplish

This action requires owners of pot and hook-and-line C/Ps to be issued specific permits and endorsements to fish for Pacific cod in the State parallel fishery. This action effectively requires an owner of a pot or hook-and-line C/P who is issued an FFP to choose to fish for Pacific cod predominantly in the Federal fishery, or surrender the FFP and fish in State waters for the remainder of the 3-year term of the FFP. Owners of pot or hook-and-line C/Ps eligible to participate in the Federal fisheries are unlikely to surrender their FFP and give up the opportunity to continue to fish Pacific cod in the Federal fishery unless they are close to the end of the 3-year term of the FFP. Relying exclusively on Pacific cod catch in the parallel and other State fisheries for up to 3 years could represent a significant loss in revenue for many C/Ps because most Pacific cod are located in and caught in the Federal waters of the BSAI. Although this action does not prohibit the owner of a C/P without an FFP or LLP license from participating in the parallel fishery, it is intended to discourage the current practice of surrendering an FFP or removing an endorsement from an FFP before participating in the parallel fishery to avoid NMFS observer, VMS, and recordkeeping and reporting requirements.

Conservation and Management

This action supports the conservation and management of Federal fisheries as provided by Amendments 67 and 85 to the BSAI FMP. Amendment 67 created exclusive pot C/P and hook-and-line C/P sectors in order to participate in the BSAI Pacific cod fishery through an LLP. The creation of sectors effectively removed some vessels that did not historically participate in these Pacific cod fisheries, and reduced competition that contributed to the race for fish. Some of the C/Ps that did not qualify for the necessary LLP endorsement in Amendment 67 continue to fish for Pacific cod in the parallel fishery off allocations for the C/P pot and hook-and-line sectors created by Amendment 85. This action applies the same LLP endorsements that are required for Federally permitted pot or hook-and-line C/Ps to participate in the BSAI Pacific cod fishery to the parallel Pacific cod fishery, limiting the ability of C/Ps without an LLP or the appropriate LLP endorsements to fish off the Pacific cod sector allocations in the parallel fishery. Thus, this action contributes to conservation and management objectives by preventing C/Ps without an LLP or the appropriate endorsements to continue to participate in the parallel fishery, reducing the pool of vessels competing for limited allocations to the C/P pot and hook-and-line sectors, and limiting the race for fish in the BSAI.

An interim final rule for Steller sea lion protection measures (75 FR 77535, December 13, 2010, corrected 75 FR 81921, December 29, 2010) established closures in critical habitat waters 0 nm to 3 nm around certain rookeries and haulouts in the Aleutian Islands subarea. In the November 2010 Biological opinion that served as the basis for the Steller sea lion interim final rule, NMFS analyzed the application of closures for parallel and Federal Pacific cod fisheries. In that analysis, the parallel fishery was expected to be managed with the same closures as specific for the Federal Pacific cod fisheries as shown in Table 12 to 50 CFR part 679. Although the interim final rule closed State waters occurring inside Steller sea lion critical habitat, on January 11, 2011, the State issued an emergency order that allowed for Pacific cod harvest by hook-and-line vessels 58 ft length overall (LOA) or less, and by pot vessels 60 feet LOA or less, in critical habitat located in State waters between 175 degrees W. longitude and 178 degrees W. longitude. These areas are closed to Federally permitted vessels. NMFS has initiated an Endangered Species Act Section 7 consultation on the State's emergency order. Although this action does not prohibit the owner of a C/P without an FFP or LLP license from participating in the parallel fishery, this rule is intended to discourage a pot or hook-and-line C/P from surrendering its FFP and fishing in the parallel fishery in those areas closed in Table 12 to 50 CFR part 679 but open under State parallel management. This action will facilitate implementation of the closure areas for the protection of Steller sea lion critical habitat, as provided in the interim final rule and required by the biological opinion.

Comments and Responses

Detailed information on the management background and need for the action is in the preamble to the proposed rule (76 FR 13331, March 11, 2011). The regulatory amendments in this rule are unchanged from the proposed rule. Comments on the proposed rule were invited through April 11, 2011. NMFS received two submissions containing one unique public comment on the proposed rule. The comment is summarized and responded to below.

Comment: The commenters express support for the action because it may address loopholes that promoted an increase in fishing effort for Pacific cod, a prey species for endangered populations of Steller sea lions. Further, the commenters assert that the rule improves monitoring of Pacific cod fisheries.

Response: NMFS concurs.

Changes From the Proposed Rule

NMFS makes two changes in the final rule to correct the following references to be consistent with existing regulations. To correct the references, one change is made to § 679.7(c)(4)(i) to reflect the correct regulatory reference § 679.20(a)(7)(ii)(A)(4) through § 679.20(a)(7)(ii)(A)(6), and one change is made in § 679.7(c)(4)(ii) to reflect the correct regulatory reference § 679.20(a)(7)(ii)(A)(6) through § 679.20(a)(7)(ii)(A)(4). These corrections relate the appropriate gear type for pot or hook-and-line gear with the correct citation. These corrections have no other effect than to make the references consistent with current regulation at § 679.20.

Classification

The Administrator, Alaska Region, NMFS, determined that this final rule is necessary for the conservation and management of the groundfish fisheries off Alaska and that it is consistent with the Magnuson-Stevens Act and other applicable law.

The preamble to the proposed rule and this final rule serve as the small entity compliance guide required by Section 212 of the Small Business

Regulatory Enforcement Fairness Act of 1996. This action does not require any additional compliance from small entities that is not described in the preamble. Copies of this final rule are available from NMFS at the following Web site: *http://alaskafisheries.noaa.gov.*

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866.

Regulatory Flexibility Act

A final regulatory flexibility analysis (FRFA) was prepared, as required by section 604(a) of the Regulatory Flexibility Act (RFA). The FRFA incorporates the initial regulatory flexibility analysis (IRFA) and provides a summary of the analyses completed to support the action. A copy of this analysis is available from NMFS (see **ADDRESSES**).

The FRFA for this final action explains the need for this rule, and its objectives. The FRFA notes that one public comment on the IRFA was submitted; describes and estimates the number of small entities to which the rule will apply; describes projected reporting, recordkeeping, and other compliance requirements of the rule; and describes the steps the agency has taken to minimize the significant economic impact on small entities, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency that affect the impact on small entities was rejected.

Need for and Objectives of the Rule

This action is necessary because several owners of pot and hook-and-line C/Ps who have been issued an FFP and have been participating in the BSAI parallel Pacific cod fishery without being issued the FFP and LLP license endorsements on those permits and licenses that are necessary to participate in the Federal Pacific cod fishery. The additional catch of Pacific cod resulting from fishing without FFP and LLP license endorsements was circumventing the intended effectiveness of three FMP amendments that were implemented to control access and curtail the excessive competition and fishing effort that had developed in the Pacific cod fishery throughout much of the previous two decades. Other vessel owners in the BSAI parallel Pacific cod fishery have surrendered or amended endorsements on their FFPs before fishing in the Pacific cod parallel fishery to avoid NMFS observer, VMS, or recordkeeping and reporting requirements. The objectives for this action are to deter owners of pot and hook-and-line C/Ps from fishing for Pacific cod in the parallel fishery without the necessary FFP and LLP license endorsements, and to reduce the opportunities for C/P vessel owners to avoid NMFS observer, VMS, or recordkeeping and reporting requirements.

Public Comments

A proposed rule was published on March 11, 2011 (76 FR 13331) that included a summary of the IRFA that was prepared for the proposed rule. The public comment period ended on April 11, 2011. No comments specific to the IRFA were received. The one comment received specific to the action was in favor of the action and was summarized earlier in the preamble under Comments and Responses.

Number and Description of Small Entities Directly Regulated by the Rule

The directly regulated entities for this final action are the members of the commercial fishing industry that own groundfish pot or hook-and-line C/Ps that operate in the BSAI and State parallel waters. Under a conservative application of the Small Business Administration criterion and the best available data, there are four small entities out of a total of 44 vessels in 2008 that will be directly regulated by the final action. To provide these estimates, earnings from all Alaskan fisheries for 2008 were matched with the vessels that participated in the BSAI pot or hook-and-line fishery for that year.

Description of Significant Alternatives and a Description of Steps Taken to Minimize the Significant Economic Impacts on Small Entities

To minimize impacts on small entities, this action will not apply to pot or hook-and-line C/Ps of less than 32 ft length overall (LOA), or to pot or hook-and-line catcher vessels. The catcher vessels participating in these fisheries are generally operating in parallel and other fisheries only, and are not required by NMFS to be designated on an LLP license or FFP to participate in these groundfish fisheries.

In addition to the action alternative, NMFS evaluated an alternative to prohibit any owner of a vessel with a C/P endorsement on its FFP from amending the C/P endorsement, and only allow surrender or reactivation of the FFP at the end of the FFP permit cycle. That alterative was rejected because it applied to jig and trawl C/Ps, and was beyond the scope of the problem statement and analysis. NMFS also evaluated the ''no action'' alternative, but it was rejected because it does not address the problem statement.

The majority of the directly regulated entities under this action are not considered small entities, as defined under the RFA. Within the universe of small entities that are the subject of this FRFA, impacts may accrue differently (*i.e.,* some small entities could be negatively affected and others positively affected). Thus, this final action represents tradeoffs in terms of impacts on small entities. However, this action provides options for the smallest of the small entities under this amendment by excluding catcher vessels from the regulatory changes. The restrictions on participation in the BSAI Pacific cod parallel fishery only apply to pot and hook-and-line C/Ps; therefore only these C/Ps are considered here.

Overall, it is unlikely that the combination of these restrictions will preclude vessel owners with a high degree of economic dependence upon the pot or hook-and-line groundfish fisheries from participating in the Pacific cod parallel fishery. Most of the vessel owners who are highly dependent on these fisheries were issued an LLP license with pot or hook-and-line Pacific cod endorsements, in 2003, under Amendment 67, by demonstrating recent catch history in the BSAI Pacific cod fishery. Most of the vessel owners who have not been issued an LLP license with a Pacific cod endorsement and who have fished in the parallel fishery are recent entrants to the fishery and have not demonstrated long-term economic dependence on the fishery. These vessel owners will continue to have access to the state Pacific cod fishery after implementation of the final action. None of the entities that have historically engaged in the practices described in the preamble to this rule, and that circumvented the intent of sector allocations in the Pacific cod fishery, are small entities.

Based upon the best available scientific data, and consideration of the objectives of this action, NMFS determined that there are no alternatives to this action that have the potential to accomplish the stated objectives of the Magnuson-Stevens Act and any other applicable statutes and that have the potential to minimize any significant adverse economic impact of the rule on small entities. The analysis did not identify any Federal rules that will duplicate, overlap, or conflict with the action. This rule requires revisions to

some existing recordkeeping and reporting requirements but imposes no new requirements on the affected vessel owners or operators.

Collection-of-Information Requirements.

This rule contains collection-of information requirements subject to the Paperwork Reduction Act (PRA) that have been approved by the Office of Management and Budget (OMB), under OMB Control No. 0648–0206. Public reporting burden for an Application for a Federal Fisheries Permit is estimated to average 21 minutes per response. This rule also includes a collection-of-information that has been approved by OMB under OMB Control No. 0334. Total public reporting burden for the License Limitation Program is estimated at 268 hours.

These estimates of public reporting burden include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed as well as completing and reviewing the collection-of-information. Send comments regarding this burden estimate or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see Public **ADDRESSES**); email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285. Notwithstanding any other provision of law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 22, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447.

■ 2. In § 679.4, paragraphs (b)(4)(ii) and (iii) are revised to read as follows:

§ 679.4 Permits.

* * * * *

(b) * * *

(4) * * *

(ii) *Surrendered permit*—(A) An FFP permit may be voluntarily surrendered in accordance with paragraph (a)(9) of this section. Except as provided under paragraph (b)(4)(ii)(B) of this section, if surrendered, an FFP may be reissued to the permit holder of record in the same fishing year in which it was surrendered. Contact NMFS/RAM by telephone, at (907) 586–7202 or toll-free at (800) 304–4846.

(B) NMFS will not reissue an FFP to the owner of a vessel named on an FFP that has been issued with endorsements for catcher/processor vessel operation type, pot or hook-and-line gear type, and the BSAI area, until after the expiration date of the surrendered FFP.

(iii) *Amended permit*—(A) An owner who applied for and received an FFP must notify NMFS of any change in the permit information by submitting an FFP application found at the NMFS Web site at *http://alaskafisheries.noaa.gov.* The owner must submit the application as instructed on the application form. Except as provided under paragraph (b)(4)(iii)(B) of this section, upon receipt and approval of a permit amendment, the Program Administrator, RAM, will issue an amended FFP.

(B) NMFS will not approve an application to amend an FFP to remove a catcher/processor vessel operation endorsement, pot gear type endorsement, hook-and-line gear type endorsement or BSAI area endorsement from an FFP that has been issued with endorsements for catcher/processor vessel operation type, pot or hook-and-line gear type, and the BSAI area.

* * * * *

■ 3. In § 679.7, paragraphs (c)(3) and (c)(4) are added to read as follows:

§ 679.7 Prohibitions.

* * * * *

(c) * * *

(3) *Parallel fisheries.* Use a vessel named or required to be named on an FFP to catch and process Pacific cod from waters adjacent to the BSAI when Pacific cod caught by that vessel is deducted from the Federal TAC specified under § 679.20(a)(7)(ii)(A)(*4*) of this part for hook-and-line gear or (a)(7)(ii)(A)(*6*) of this part for pot gear unless that vessel is designated on both:

(i) An LLP license issued under § 679.4(k) of this part with the following endorsements:

(A) A catcher/processor endorsement;

(B) A BSAI catcher/processor Pacific cod hook-and-line, or a BSAI catcher/processor Pacific cod pot endorsement;

(C) An Aleutian Islands area endorsement or Bering Sea area endorsement; and

(D) A non-trawl endorsement; and

(ii) An FFP issued under § 679.4(b) of this part with the following endorsements:

(A) A catcher/processor endorsement;

(B) A BSAI endorsement; and

(C) A pot or hook-and-line gear type endorsement.

(4) *Parallel fishery closures*—(i) Use a vessel named or required to be named on an FFP to catch and process Pacific cod with pot gear from waters adjacent to the BSAI when Pacific cod caught by that vessel is deducted from the Federal TAC specified under § 679.20(a)(7)(ii)(A)(*6*) of this part for pot gear if the BSAI is open to directed fishing for Pacific cod but is not open to directed fishing for Pacific cod by a catcher/processor using pot gear.

(ii) Use a vessel named or required to be named on an FFP, to catch and process Pacific cod with hook-and-line gear from waters adjacent to the BSAI when Pacific cod caught by that vessel is deducted from the Federal TAC specified under § 679.20(a)(7)(ii)(A)(*4*) of this part for hook-and-line gear, if the BSAI is open to directed fishing for Pacific cod but is not open to directed fishing for Pacific cod by a catcher/processor using hook-and-line gear.

* * * * *

[FR Doc. 2011–30727 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 660

[Docket No. 110218143–1606–02]

RIN 0648–BA49

Fisheries in the Eastern Pacific Ocean; Pelagic Fisheries; Vessel Identification Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS hereby revises vessel identification requirements for fishing vessels with west coast highly migratory species (HMS) permits that are required under the Fishery Management Plan for U.S. West Coast Fisheries for Highly

Migratory Species and for U.S. vessels fishing under the U.S.-Canada Albacore Treaty. The new measures allow these vessels to be marked in accordance with international standards that were implemented in early 2010 by NMFS for vessels fishing on the high seas in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention Area). Currently, the marking requirements for fishing vessels with west coast HMS permits or under the U.S.-Canada Albacore Treaty do not comport with these international standards. These new measures require vessels that fish in the Convention Area to display at all times their International Radio Call Sign (IRCS), or if an IRCS has not been assigned to the vessel, the vessel is required to display its official number, preceded by the characters ''USA–.'' The intent of this action is to bring the existing vessel identification requirements for U.S. vessels with west coast HMS permits or under the U.S.-Canada Albacore Treaty into conformity with the binding vessel identification requirements adopted by the Western and Central Pacific Fisheries Commission (WCPFC).

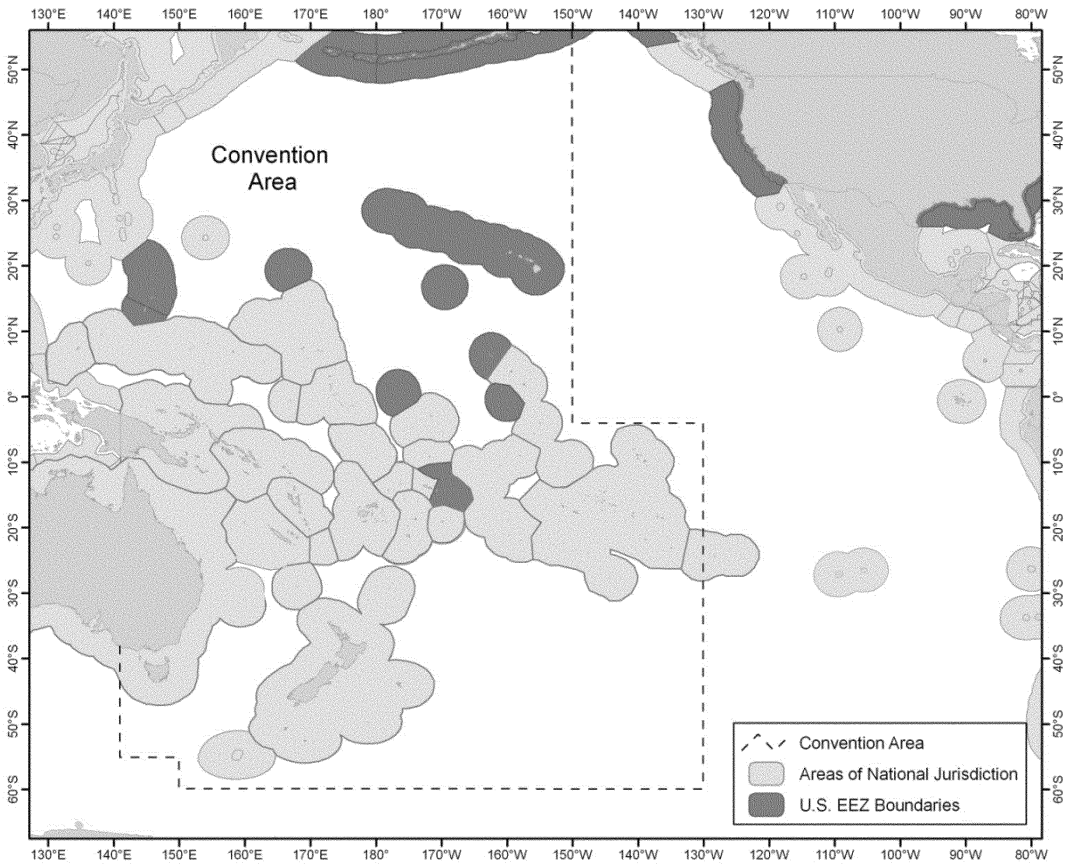
DATES: These regulations become effective on January 1, 2012.

ADDRESSES: Copies of the proposed and final rules and the Regulatory Impact Review for this action are available via the Federal e-Rulemaking portal, at *http://www.regulations.gov,* and are also available from the Regional Administrator, Rodney R. McInnis, NMFS Southwest Regional Office, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802. Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to the NMFS Southwest Regional Office and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

FOR FURTHER INFORMATION CONTACT: Heidi Hermsmeyer, NMFS SWR, (562) 980–4036.

SUPPLEMENTARY INFORMATION: The WCPFC was established under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). The Convention's objective is to ensure, through effective management, the long-term conservation and sustainable use of highly migratory fish stocks in the western and central Pacific Ocean, including measures to manage and conserve tunas and to minimize impacts on non-target, associated, and dependent species, such as sea turtles and seabirds. Figure 1 is a map of the Convention Area. Several U.S. troll, pole-and-line, tuna purse seine, and pelagic longline fisheries operate in the Convention Area.

Figure 1. Map of WCPFC Convention Area.



Under the Convention and decisions of the WCPFC, specifically Conservation and Management Measure 2004–03, ''Specifications for the Marking and Identification of Fishing Vessels,'' vessels that are authorized to fish on the high seas in the Convention Area are required to be identified in accordance with the Standard Specifications for the

Marking and Identification of Fishing Vessels of the Food and Agriculture Organization of the United Nations. By the final rules published on January 21, 2010 (75 FR 3335 and 3416), NMFS implemented those standards for U.S. fishing vessels under the authority of the Western and Central Pacific Fisheries Convention Implementation Act (16 U.S.C. 6901 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*), but those regulations did not extend to fishing vessels with west coast HMS permits or operating under the U.S.-Canada Albacore Treaty. Specifically, U.S. vessels fishing for HMS on the high seas for commercial purposes that are required to obtain a NMFS-issued WCPFC Area Endorsement are required to display their IRCS on the port and starboard sides of the hull or superstructure and deck surface. If an IRCS has not been assigned, the vessels are required to display their official number (*i.e.,* USCG documentation number or other registration number) preceded by the characters ''USA'' and a hyphen (*i.e.,* ''USA-''). Only these markings are allowed on the hull or superstructure, apart from the vessel's name and hailing port.

This final rule is consistent with the requirements adopted by the WCPFC as it revises existing vessel identification regulations at Title 50, Code of Federal Regulations, §§ 660.704 and 300.173 to conform to the international standards. U.S. vessels that are issued a permit under 50 CFR 660.707, *i.e.,* vessels that fish for HMS off the coasts of or land HMS in the States of California, Oregon, and Washington, and that fish for HMS on the high seas of the Convention Area are, under this final rule, required to display vessel markings as described above. Vessels that fish for HMS only within the U.S. Exclusive Economic Zone (EEZ) off the U.S. West Coast or on the high seas outside of the Convention Area (*e.g.,* in the eastern Pacific Ocean) have the option to be marked pursuant to the vessel identification requirements described above, or maintain existing markings. This final rule modifies only the requirements for the size and characters with which Federally-permitted HMS fishing vessels are marked, and does not modify the requirements for vessel operations or for other aspects of HMS fisheries. The Pacific Fishery Management Council (Council) was briefed on this issue at its September 2008 meeting; in a letter dated November 20, 2008, the Council formally recommended that NMFS revise regulations accordingly.

It is estimated that at a maximum 125 vessel owners would change their vessel markings (estimate based on the current number of active U.S. west coast-based vessels targeting HMS on the high seas that have the potential to fish in the Convention Area) as a result of the rule. However, it is highly likely that a much smaller number of vessel owners will actually be required to change their markings. In recent years fewer than 10 U.S. west coast-based vessels have fished in the Convention Area. In addition, there are vessels based out of Hawaii that have west coast HMS permits that fish in the Convention Area and therefore will be required to change their markings, including at least 15 longline vessels and 8 troll and bait boat vessels. Some vessels may also opt to change their markings to conform to international standards and be prepared to fish in the Convention Area should fishing conditions and practices change in the future.

Response to Comments

NMFS received two public comments during the comment period. One comment from the Hawaii Longline Association (HLA) expressed support for the action. The other comment sent by the Western Fishboat Owners Association (WFOA) conveyed some concern and confusion regarding the applicability of the requirements to the albacore troll and baitboat fleet.

Comment 1: The HLA expressed support for this action given that HLA vessels often move across the boundary between the eastern Pacific Ocean (EPO) and the Convention Area and having a single set of marking requirements will facilitate such movements.

Response: NMFS acknowledges this comment in support of the action.

Comment 2: A comment received from WFOA noted some concern and confusion with the following statement in the preamble of the proposed rule regarding the vessel identification requirements for U.S. vessels used for commercial fishing for HMS on the high seas with a NMFS-issued WCPFC Area Endorsement, ''Only these markings would be allowed on the hull or superstructure, apart from the vessel's name and hailing port.'' The commenter also noted that this statement was made in the preamble of the proposed rule but was not included in the proposed regulatory text. The letter noted that the ''current rule unfortunately can be read that the only marking acceptable under it is that called for by the WCPFC so that now a vessel fishing in the South Pacific has to have one identification mark, and when it returns to the Eastern Pacific Fishery and fishes under the treaty with Canada the vessel identification number has to be changed to what is called for under those regulations.'' The commenter also expressed the belief that a vessel marked in accordance with the regulations for the U.S. Albacore Treaty with Canada should adequately fulfill the requirements under the WCPFC per section 2.1.1(b) of the WCPFC Conservation and Management Measure on Specifications for the Marking and Identification of Fishing Vessels (CMM 2004–03).

Response: The statement in the preamble to the proposed rule regarding the requirement to have only one set of vessel identification markings on a fishing vessel is a reference to regulations governing U.S. vessels with a WCPFC Area Endorsement under 50 CFR 300.217(b)(2), which reads, ''With the exception of the vessel's name and hailing port, the marking required in this section shall be the only vessel identification mark consisting of letters and numbers to be displayed on the hull and superstructure.'' This is one of the requirements for vessel identification under section 2.1.3(a) of WCPFC CMM 2004–03. Thus, if a U.S. vessel anticipates fishing in the Convention Area and obtains a WCPFC Area Endorsement, the vessel is required to be marked in accordance with 50 CFR 300.14 and 300.217. However, if a U.S. vessel operating with a west coast HMS permit or under the U.S.-Canada Albacore Treaty does not require a WCPFC Area Endorsement, it may maintain its current vessel markings according to 50 CFR 660.704 or 50 CFR 300.173. If vessels choose to mark their vessels according to the WCPFC requirements and are fishing in the western and central Pacific Ocean, they will not be required to change those markings upon entering the EPO. As proposed, this rulemaking amends 50 CFR 300.173 so that vessels may operate under the U.S.-Canada Albacore Treaty and be marked according to the WCPFC requirements.

Finally, regarding Section 2.1.1(b) of WCPFC CMM 2004–03, that section of the WCPFC vessel identification requirements is only applicable to vessels that do not have an IRCS and the U.S.-Canada Albacore Treaty vessel identification requirements do not satisfy the requirements under this exception. If a vessel requires a WCPFC Area Endorsement and does not have an IRCS, it must be marked with the Federal, State, or other documentation number preceded by the characters ''USA'' and a hyphen (that is, ''USA-''). The U.S. Canada Albacore Treaty regulations require vessels to be marked with the Federal or State documentation

number followed by the letter ''U'' and the size requirements differ. If a vessel has an IRCS and requires a WCPFC Area Endorsement, it must be marked with its IRCS. As mentioned before, vessels that are marked according to the WCPFC Area Endorsement requirements may retain those vessel identification markings and operate in the EPO with a west coast HMS permit or under the U.S.-Canada Albacore Treaty without making changes to those vessel identification markings.

Changes From the Proposed Rule

The only change from the proposed rule is the removal of paragraph (c) of 50 CFR 300.217. This paragraph provided an exception to the vessel identification requirements under § 300.217 for fishing vessels that are subject to the vessel identification requirements of §§ 300.173 or 660.704 of this title until conflicts between the requirements of this section and the requirements of those sections are reconciled. Since this rulemaking reconciles those conflicts, this exception is no longer necessary, thus it is being removed.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this final rule is consistent with the Magnuson-Stevens Act and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule and is not repeated here. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA) and which have been approved by the Office of Management and Budget (OMB) under control numbers 0648–0361 and 0648–0492. Public reporting burden for vessel identification requirements under 0648–0361 is estimated to average 45 minutes per response, and public reporting burden for vessel marking requirement under 0648–0492 is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–7285.

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects

50 CFR Part 300

Administrative practice and procedure, Fisheries, Reporting and recordkeeping requirements.

50 CFR Part 660

Administrative practice and procedure, Reporting and recordkeeping requirements.

Dated: November 22, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator For Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 300 and 660 are amended as follows:

PART 300—INTERNATIONAL FISHERIES REGULATIONS

■ 1. The authority citation for part 300 continues to read as follows:

Authority: 16 U.S.C. 2431 *et seq.,* 31 U.S.C. 9701 *et seq.*

■ 2. Section § 300.173 is revised to read as follows:

§ 300.173 Vessel identification.

Each U.S. vessel fishing under the Treaty must be marked for identification purposes, as follows:

(a) A vessel used to fish on the high seas within the Convention Area as defined in § 300.211 must be marked in accordance with the requirements at §§ 300.14 and 300.217.

(b) A vessel not used to fish on the high seas within the Convention Area as defined in § 300.211 must be marked in accordance with either:

(1) Sections 300.14 and 300.217, or

(2) The vessel's name and U.S. Coast Guard Documentation number (or if not documented, the state registration number) followed by the letter U must be prominently displayed where they are clearly visible both from the air and from a surface vessel. Numerals and the letter U must meet the size requirements of § 660.704 of this title. Markings must be legible and of a color that contrasts with the background.

§ 300.217 [Amended]

■ 3. In § 300.217, remove paragraph (c).

PART 660—FISHERIES OFF WEST COAST STATES

■ 4. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.* and 16 U.S.C. 7001 *et seq.*

■ 5. Section 660.704 is revised to read as follows:

§ 660.704 Vessel identification.

(a) *Applicability.* This section only applies to commercial fishing vessels that fish for HMS off, or land HMS in the States of California, Oregon, and Washington. This section does not apply to recreational charter vessels that fish for HMS off or land HMS in the States of California, Oregon, and Washington. Each fishing vessel must be marked for identification purposes, as follows:

(1) A vessel used to fish on the high seas within the Convention Area as defined in § 300.211 of this title must be marked in accordance with the requirements at §§ 300.14 and 300.217 of this title.

(2) A vessel not used to fish on the high seas within the Convention Area as defined in § 300.211 of this title must be marked in accordance with either:

(i) Sections 300.14 and 300.217 of this title, or

(ii) The vessel's official number must be affixed to the port and starboard sides of the deckhouse or hull, and on an appropriate weather deck so as to be visible from enforcement vessels and aircraft. The official number must be affixed to each vessel subject to this section in block Arabic numerals at least 10 inches (25.40 cm) in height for vessels more than 25 ft (7.62 m) but equal to or less than 65 ft (19.81 m) in length; and 18 inches (45.72 cm) in height for vessels longer than 65 ft (19.81 m) in length. Markings must be legible and of a color that contrasts with the background.

(b) [Reserved]

[FR Doc. 2011–30730 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 76, No. 229
Tuesday, November 29, 2011

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 300

RIN 3206–AM06

Statutory Bar to Appointment of Persons Who Fail To Register Under Selective Service Law

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The U.S. Office of Personnel Management is issuing proposed regulations to change its procedures for determining whether an individual's failure to register with the Selective Service System was knowing and willful. These changes are intended to ensure that individuals in these circumstances have an opportunity to fully explain their failure to register and that the determination is based on a more complete record. In addition, the proposed regulations delegate authority to Federal agencies to make initial determinations as to whether an individual's failure to register with the Selective Service System was knowing and willful. This delegation will facilitate more efficient decisions and reduce paperwork.

DATES: Comments must be received on or before January 30, 2012.

ADDRESSES: You may submit comments through the Federal eRulemaking Portal at *http://www.regulations.gov.* All submissions received through the portal must include the agency name and docket number of Regulation Identifier Number (RIN) for this proposed rulemaking.

You may also send, deliver, or fax comments to Angela Bailey, Deputy Associate Director for Recruitment and Hiring, U.S. Office of Personnel Management, Room 6551, 1900 E Street NW., Washington, DC 20415–9700; email at *employ@opm.gov;* or fax at (202) 606–2329.

FOR FURTHER INFORMATION CONTACT: Mike Mahoney by telephone at (202) 606–0830; by fax at (202) 606–2329; by TTY at (202) 418–3134; or by email at *michael.mahoney@opm.gov.*

SUPPLEMENTARY INFORMATION: Under the Military Selective Service Act of 1948, as amended (hereafter referred to as ''the Act''), all males between the ages of 18 and 26 who were born after December 31, 1959, are required to register with the Selective Service System, unless the Act exempts them. (50 U.S.C. App. 453). In addition, the Act establishes that ''[e]very person shall be deemed to have notice of the requirements of this title [sections 451 to 471a of this Appendix] upon publication by the President of a proclamation or other public notice fixing a time for any registration under section 3 [section 453 of this Appendix].'' (50 U.S.C. App. 465(a)). In 1980, President Carter issued such a proclamation (Proclamation No. 4771, July 2, 1980), which required that registration begin on July 21, 1980. That proclamation, as amended, remains in effect. Every covered male is now deemed to have had notice of these requirements, by virtue of that Act and Proclamation 4771, as amended.

In 1985, Congress enacted section 3328 of title 5, United States Code, which provides that men who are born in 1960 or later and who are required to, but did not, register under section 3 of the Military Selective Service Act generally are ineligible for Federal service. Section 3328 provides that an individual born after 1959 and required to register and ''who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual, shall be ineligible for appointment to a position in an Executive agency,'' unless the individual can establish ''by a preponderance of the evidence that the failure to register was neither knowing nor willful.'' Section 3328 also provides that the Office of Personnel Management (OPM), ''in consultation with the Director of the Selective Service System, shall prescribe regulations to carry out'' section 3328, including ''provisions prescribing procedures for the adjudication of determinations of whether a failure to register was knowing and willful.'' In 1987, Congress amended section 3328 to allow OPM to delegate decision-making authority to agencies (Pub. L. 100–180, 101 Stat. 1019, December 4, 1987).

As noted above, section 3328 applies only to males who are (or were) required to register. Certain individuals may be (or may have been) exempt from registration as provided by sections 3 and 6(a) of the Military Selective Service Act (50 U.S.C. App. 453 and 456(a)) or by Presidential proclamation. Examples of individuals who may be so excluded are: (1) Certain non-immigrant aliens who are residing in the United States temporarily, such as those on visitor or student visas; (2) individuals who are unable to register due to circumstances beyond their control, such as being hospitalized, institutionalized, or incarcerated; and (3) members of the Armed Forces on full-time active duty, as well as cadets and midshipmen at the United States service academies.

An individual covered by the Act who has not registered can do so at any time before reaching age 26. After age 26, he may no longer register and is no longer able to correct his failure to register. Consequently, as a general rule, these cases arise only when an applicant or employee is age 26 or older and the possibility of registration is precluded. The current regulations, promulgated in 1987, establish that agencies should ''request a written statement of Selective Service registration status from each covered individual at an appropriate time during the consideration process. * * *'' (5 CFR 300.704(a)). Accordingly, as a practical matter, OPM is called upon to adjudicate a case involving failure to register only if registration is precluded due to the covered individual's age.

The Applicable Standard

The statute OPM is required to implement contains an ambiguity. Certain provisions of section 3328 (*e.g.,* subsection (a)(2)) indicate that a failure to register that is *both* knowing *and* willful is necessary to make the individual ineligible for Federal employment. The third sentence of subsection (b) of section 3328, however, states that OPM's procedures must require that a determination that a failure to register was knowing and willful ''may not be made if the individual concerned shows by a preponderance of the evidence that the failure to register was neither knowing

nor willful.'' This provision suggests that a failure to register that is *either* knowing *or* willful would suffice to make the individual ineligible for employment.

There is substantial case law, under the Military Selective Service Act of 1948 and in other contexts, concerning the meaning of the terms ''knowing'' and ''willful.'' Although OPM acknowledges that the terms have substantial overlap, it is possible, at least theoretically, that a failure to register could be knowing but not willful, or the reverse. Accordingly, OPM believes that there are divergent potential interpretations of the statute, either of which could be reasonable constructions, and that this ambiguity should be resolved.

OPM proposes to resolve the ambiguity by amending the regulations to provide that an applicant is eligible unless the failure to register was *both* knowing *and* willful. In other words, the applicant or employee could establish eligibility by demonstrating, by a preponderance of the evidence (*i.e.,* the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true), that a failure to register was either not knowing or not willful. This interpretation is supported by Congress's stated concern that a person should not be ineligible for Federal service unless his failure to register is determined to be both knowing and willful. Moreover, the legislative history, which indicates that Congress was concerned with draft-eligible males who ''refused'' to register, is also consistent with this interpretation. (See House Rept. No. 99–81, May 10, 1985.) The reference to ''refusal'' in the legislative history implies that the individual has taken affirmative steps or acts to decline to do something. This interpretation, which suggests that the term ''willful'' has a meaning distinct from ''knowing'' and should not be read out of the statute, seems particularly appropriate in light of the presumption under the Act that notice has been given. In other words, if a showing of knowledge alone were sufficient to make the person ineligible for Federal employment, it would be virtually impossible for an applicant or employee ever to prevail, because the law presumes he has knowledge of the requirement to register.

The proposed regulations also establish new procedures for submitting evidence to be used by the decision-maker in undertaking the inquiry required by section 3328. The existing procedures (5 CFR 300.705(d)) provide only for the submission of a request for an OPM determination together with any explanation or other documentation the covered individual chooses to furnish. It has been difficult for individuals to establish, through these limited procedures, that their failure to register was not knowing and willful. The more robust procedures that OPM is proposing would expressly require an individual to submit a sworn statement in support of his claim and make himself available to be interviewed by the adjudicator or provide testimony concerning his explanation for his failure to register.

OPM believes that the proposed procedures would provide individuals with a more meaningful opportunity to explain why their failure to register meets the statutory and regulatory standard of proof. They would also provide the adjudicator a more complete record on which to base his or her determination.

Delegation

The proposed regulation would directly assign to Executive agencies the authority to make the initial determination as to whether an individual's failure to register with the Selective Service System was knowing and willful. This will permit faster decisions and reduce paperwork.

Reconsideration

OPM's proposed regulations, however, also provide that OPM reserves reconsideration authority for itself so that an individual may seek review, by an OPM official designated by the Director, of an agency's initial determination that a failure to register was knowing and willful. The proposed regulations also authorize OPM to audit and oversee agencies' performance of this function, and to revoke the delegation as to any particular agency, if the agency fails to carry out the function in accordance with applicable law. If OPM revokes a delegation to a particular agency, the Director of OPM must designate an OPM official who will make the initial determinations on adjudication requests arising from that agency. The proposed regulations also provide that, once one agency has made a determination regarding whether an individual's failure to register was knowing and willful, a subsequent agency would need to obtain permission from OPM before it could deviate from the first agency's finding.

Consultation With the Selective Service System

Individuals covered by the Act who have not registered, and who are seeking to become employed or remain employed by the Federal Government, must demonstrate by a preponderance of the evidence that their failure to register was not knowing and willful. In acting on individual cases, agencies must consult with the Selective Service System. The Selective Service Web site provides easy and immediate access to verify individuals' registration status, and agencies can request relevant documents from the Selective Service.

Elimination of ''Applicant's Statement of Selective Service Registration Status''

OPM's current regulations contain a self-certification statement of Selective Service registration to be completed by applicants and employees. Agencies reproduce this statement on a separate form. In recent years, however, OPM has taken steps to streamline the application process and reduce paperwork. A question on Selective Service registration is now part of Optional Form (''OF'') 306, Declaration for Federal Employment, which is used to determine an applicant's acceptability and suitability for Federal positions. Therefore, the Applicant's Statement of Selective Service Registration Status is no longer needed, and we are proposing to remove it from OPM's regulations.

To accomplish the objectives described above, these proposed regulations would make the following specific changes in subpart G of part 300 of title 5, Code of Federal Regulations:

The revised section 300.701 would replace the relevant statutory text that is repeated in the current section 300.701 with a concise statement of the purpose of subpart G, which is to implement the statutory bar on employment in an Executive agency of an individual who was required to register with the Selective Service System, but who knowingly and willfully failed to register before reaching age 26.

The new section 300.702 would replace the statement about coverage of the subpart that is currently in that section with a shorter and clearer statement that the subpart applies to all appointments in Executive agencies, as defined in 5 U.S.C. 105.

In section 300.703, which defines terms used in subpart G, we are proposing to add *authorized agency official* as a defined term to refer to an official designated by the head of an Executive agency to be responsible for determinations as to whether the failure

of an applicant or employee covered by subpart G to register with the Selective Service System was knowing and willful.

The proposed regulations revise the remaining sections of subpart G to clarify the responsibilities of agencies regarding job applicants and employees who are required to register with the Selective Service System. The proposed regulations also set forth the procedures for initial determinations by agencies, and subsequent reconsideration of those determinations by OPM, concerning whether a covered individual's failure to register was knowing and willful.

Section 300.704 of the proposed regulations requires a Federal agency, before hiring a job applicant who is required to register with the Selective Service System, to determine the Selective Service status of that individual. If the individual provides proof that he has registered, the agency may continue to consider him for appointment.

Section 300.705 of the proposed regulations concerns acceptable proof of registration status. The agency must require the individual either to (1) Complete and sign Optional Form 306 (Declaration for Federal Employment) or another similar form provided by the agency, documenting his registration status, or (2) provide a copy of his Selective Service acknowledgement card or other proof of registration or exemption that the Selective Service System furnishes. An applicant who fails to comply with this section cannot be given any further consideration for employment. If an applicant provides documentation indicating that he has not registered, or if an employee fails to provide acceptable documentation and there is nothing in his Official Personnel Folder indicating his registration status has not been resolved previously, then the agency must comply with the requirements detailed in section 300.706.

Section 300.706 of the proposed regulations sets forth an agency's responsibility concerning applicants who are required to register with the Selective Service System but have not done so. In the case of any such person who is under age 26, the agency must provide him with a written notice advising him to register and including specific information about how to do so, the proof of registration he must provide to the agency (and the agency deadline for doing so, in order for the agency to continue to consider the individual), and a statement describing the consequences of failing to comply.

The agency must also provide notice to an individual whose failure to register was not detected by the agency until after the time of appointment, and who may still register. The agency must notify such an individual that unless he registers promptly (and the agency should provide a reasonable deadline for compliance) he will no longer be eligible for retention in his position and will thus be subject to termination. (In light of the congressional intent to encourage compliance with the registration requirement, we encourage agencies also to advise individuals for whom the obligation to register has not arisen at the time of appointment that a future failure to register will preclude any subsequent appointment in the civil service).

In the case of an individual who is over age 26, and whose failure to register was not detected by the agency until after it had appointed him, the agency must inform him that it will deem him ineligible for retention in his position unless he provides evidence that his failure to register was not knowing and willful. The agency must inform the individual as to how to request a determination that his failure to register was not knowing and willful, establish a reasonable deadline for his doing so, and inform him that his failure to seek such a determination within a reasonable time will result in the termination of his employment by the agency.

Because the above-referenced obligations are owed solely to Congress, to fulfill the purpose of the underlying statute, *i.e.,* to encourage registration with the Selective Service, any failure by the agency to comply with any of these obligations must not be interpreted to give rise to any defense or claim by an individual that his failure to register was the fault of the agency.

Section 300.707 of the proposed regulations outlines the procedure for determining whether the individual's failure to register was knowing and willful. An individual who asks an agency to determine that his failure to register was not knowing and willful must submit a sworn statement to the agency explaining why he did not register, along with any other supporting documents. The burden of proof is on the individual to demonstrate, by a preponderance of the evidence, that his failure to register was not knowing and willful. The agency would first have to check with OPM to see whether OPM or another agency had previously made a determination in the individual's case. If the matter had previously been adjudicated by OPM pursuant to a reconsideration request under § 300.708, that determination would be final. If there was no record of a prior determination by OPM, and no record of a prior determination by another agency, the agency would have to investigate and adjudicate the matter. This would include consulting with the Selective Service System and questioning the individual and any others who submitted sworn statements on his behalf. If there was no decision upon reconsideration by OPM but another agency or OPM, in an initial decision, had previously adjudicated the matter, and, after investigation, the current agency disagreed with the earlier finding, the previous agency's decision could be superseded only if OPM agreed to permit a different outcome.

The agency would be required to inform the individual in writing of its decision and inform him of his right to ask OPM to reconsider the agency's decision within 30 days after the date of the agency's decision. Section 300.707 also would require OPM to keep a repository of agency determinations under subpart G.

Proposed section 300.708 provides for reconsideration by OPM of an agency determination that an individual's failure to register with the Selective Service System was knowing and willful. OPM may do so either when it receives a request from the affected individual or on its own initiative. A reconsideration decision is made by the Director of OPM or by another official authorized by the Director to make such decisions. A reconsideration decision by OPM is final and there is no further right to administrative review. If OPM affirms the agency's determination, the individual will no longer be eligible for Federal employment. If he is currently employed by the agency, the agency must terminate his employment on the grounds that his appointment was not lawfully made.

Executive Order 13563 and Executive Order 12866, Regulatory Review

This proposed rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 13563 and Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because they would affect only some Federal agencies, employees, and job applicants.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

List of Subjects in 5 CFR Part 300

Administrative practice and procedure, Reporting and recordkeeping requirements, Government employees, organization and functions.

Office of Personnel Management.

John Berry,

Director.

Accordingly, the Office of Personnel Management is proposing to amend part 300 of title 5, Code of Federal Regulations, as follows:

PART 300—EMPLOYMENT (GENERAL)

1. The authority citation for part 300 is amended to add at the end of the Authority citations that were last revised, effective March 9, 2009, after the citation for sections 300.501 through 300.507, the following:

Secs. 300.701 through 300.709 also issued under 5 U.S.C. 3328(b).

2. Subpart G is revised to read as follows:

Subpart G—Statutory Bar to Appointment of Persons Who Fail To Register Under the Selective Service Law

Sec.

§ 300.701 Purpose.

This subpart implements section 3328 of title 5, United States Code, which bars from employment in an Executive agency an individual who was required to register with the Selective Service System and ''who is not so registered or knowingly and willfully did not so register before the requirement terminated or became inapplicable to the individual.'' The bar on employment does not apply to such an individual who can demonstrate by a preponderance of the evidence either that the failure to register was not knowing or that the failure to register was not willful.

§ 300.702 Coverage.

This subpart covers all appointments to positions in Executive agencies.

§ 300.703 Definitions.

In this subpart—

Agency means an Executive agency as defined in section 105 of title 5, United States Code.

Appointment means any personnel action that brings onto the rolls of an agency as a civil service officer or employee as defined in 5 U.S.C. 2104 and 2105, respectively, a person who is not currently employed in that agency. It includes initial employment as well as transfer between agencies and subsequent employment after a break in service. A personnel action that moves an employee within an agency without a break in service of more than 3 days is not an appointment for purposes of this subpart.

Authorized agency official means the head of an agency or an official who is authorized to act for the head of the agency in the matter concerned.

Covered individual means a male—

(1) Whose application for appointment is under consideration by an agency or who is currently employed by an agency;

(2) Who was born after December 31, 1959, and is at least 18 years of age; and

(3) Who is either (i) an applicant who is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453) at any time prior to or concurrent with the consideration of his application or (ii) an appointee who is or was required to register under section 3 of the Military Selective Service Act (50 U.S.C. App. 453) at any time prior to his current appointment.

Exempt refers to those individuals excluded from the requirement to register with the Selective Service System by sections 3 and 6(a) of the Military Selective Service Act (50 U.S.C. App. 453 and 456(a)) or by Presidential proclamation.

Preponderance of the evidence means the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

Selective Service law means the Military Selective Service Act, rules and regulations issued thereunder, and proclamations of the President under the Act.

Selective Service System means the agency responsible for administering the registration system and for determining who is required to register and who is exempt.

§ 300.704 Agency responsibility to determine registration status.

(a) Pursuant to Congress's direction in 5 U.S.C. 3328, the authorized agency official is obligated to determine the registration status of a covered individual before he may be appointed. An agency's failure to make a required registration status determination prior to an individual's appointment, however, does not relieve the agency from having to make such a determination when the agency becomes aware of the omission thereafter and does not relieve the covered individual from the obligation to cooperate with the agency in reaching a determination. The agency must take all appropriate steps to make the determination as soon as it discovers the omission, regardless of the intervening appointment.

(b) An agency may, but is not obligated to, hold open a vacancy while the individual takes steps to resolve the registration issue.

§ 300.705 Proof of registration.

(a)(1) At an appropriate time during the consideration process prior to appointment, and unless the individual furnishes other documentation as provided by paragraph (a)(2) of this section, an agency must require a covered individual to complete, sign, and date in ink Optional Form 306, Declaration for Federal Employment, or a form provided by the agency that requests information on registration status.

(2) The agency must allow a covered individual to submit, in lieu of the forms described in paragraph (a)(1) of this section, a copy of his Selective Service acknowledgement card or other proof of registration or exemption issued by the Selective Service System.

(b) An agency may give no further consideration for appointment to a covered individual who fails, within 7 business days, or another reasonable time specified by the agency, to provide the information on registration status as required by paragraph (a) of this section.

(c) An agency considering appointment of a covered individual who is a current or former Federal appointee is not required to inquire about his registration status if the agency determined that his Office Personnel Folder contains evidence that the individual is registered, is exempt, or has had a prior determination under this subpart that his failure to register was not knowing and willful.

§ 300.706 Agency responsibility regarding covered individuals who have not registered.

(a) In the case of a covered individual who is under age 26 and has not registered with the Selective Service System, and in order to further Congress's purpose in enacting 5 U.S.C. 3328, the agency must provide the individual with a written notice that advises him to register promptly and includes the following:

(1) Information about how to register online on the Selective Service System's Web site;

(2) A statement requiring the individual to submit a new Optional Form 306, agency form, or other appropriate document from the Selective Service System to prove that he has registered;

(3) Any additional documentation the agency deems necessary to establish that the individual has registered;

(4) A deadline for submitting the required documentation; and

(5) A statement that, if the individual fails to provide the required documentation before the deadline, he will no longer be eligible for appointment, or, in the case of a covered individual who has already been appointed, a statement that the failure to register will result in the individual being terminated on the ground that he was ineligible for appointment at the time he was appointed,

(b) In the case of a covered individual who is age 26 or older and has not registered with the Selective Service System, the agency, when it learns of the failure to register, must notify the individual in writing that, as required by 5 U.S.C. 3328, he is ineligible for appointment or for continued employment unless his failure to register was not knowing and willful. The notice must inform the individual that he may request in writing a determination by the agency that his failure to register was not knowing and willful if he provides, along with his request, a written explanation of his failure to register, as described in § 300.707. The individual's failure to submit this request within a reasonable time, as determined by the agency, obligates the agency to eliminate the individual from further consideration for an appointment or to commence steps to terminate the individual's continued employment, as appropriate.

§ 300.707 Agency of whether-failure to register was knowing and willful.

(a)(1) An individual who, as provided in § 300.706(b), requests a determination that his failure to register was not knowing and willful must submit to the authorized agency official a sworn statement that explains why he failed to register. The sworn statement must set forth all relevant facts and circumstances, including whether this issue has ever been adjudicated by another agency. This sworn statement must be signed and must include the following statement, ''I declare, under penalty of perjury, that the facts stated in this statement are true and correct.'' He may also submit any other documents that support his claim, including sworn statements from other individuals with first-hand knowledge of the relevant facts.

(2) An individual who requests a determination referred to in paragraph (a)(1) of this section must submit to the authorized agency official his Optional Form 306 or agency form, a copy of the written notice referred to in § 300.706(b), his request for a determination that his failure to register was not knowing and willful, his sworn statement explaining his failure to register, and any other relevant documents. The individual must demonstrate by a preponderance of the evidence that his failure to register was not knowing and willful.

(b) Upon receiving a request for a determination that an individual's failure to register was not knowing and willful, the authorized agency official must contact the Office of Personnel Management (OPM) to determine whether the issue was previously adjudicated by OPM or another agency.

(1) If the issue was previously adjudicated by OPM pursuant to a reconsideration request under § 300.708, that decision is final.

(2) If the issue was not previously adjudicated, or if it was previously adjudicated only in an initial decision by OPM or another agency, the authorized agency official must examine the individual's request and reach his or her own conclusion as to whether the failure to register was knowing and willful. The official may investigate the information in the documents provided by all appropriate means, including questioning the covered individual or employee and any other person who submitted a statement in support of his claim, and consulting with the Selective Service System. Refusal of any individual who submits a sworn statement under this section to be interviewed may be grounds for a determination that the covered individual's failure to register was knowing and willful.

(c) If, after considering the entire record, the agency reaches a different conclusion from the initial decision made by another agency, the earlier decision may be superseded only with the agreement of OPM. The agency must provide to OPM whatever documents OPM decides it needs to determine whether to permit the earlier decision to be superseded.

(d) The agency must inform the individual in writing of its decision. The decision must inform the individual that he may request reconsideration of the agency's determination under § 300.708 within 30 days after the date of receipt of the decision, at which time the agency's decision becomes final unless the individual has timely filed a request for reconsideration with OPM.

(e) An agency is not required to keep a vacant position open for a covered individual who seeks a determination under this section, unless otherwise required by law.

(f) If the agency finds that the failure to register was knowing and willful, a covered individual is ineligible for further employment consideration, or for continued employment if he has already been appointed.

(g)(1) OPM will maintain a repository for agency decisions under this section and may prescribe guidance for the submission of agency decisions under this paragraph.

(2) OPM may audit agency decisions under this subpart and may suspend or revoke an agency's authority under this subpart if it determines the agency is not carrying out its responsibilities under this subpart in accordance with applicable law and regulations. In the event of such a suspension or revocation, the Director of OPM must designate an authorized OPM official who will make the initial determinations for that agency under this section while that suspension or revocation is in effect.

§ 300.708 Reconsideration by OPM.

(a) When a request for reconsideration is filed with OPM in a timely manner, OPM will inform the agency or individual that it has received the request.

(b) The Director of OPM, or other OPM authorized official, at the request of the individual or on his or her own initiative, may review the initial decision of an agency under § 300.707 and make a determination based on all documentation provided, to affirm or overrule the agency's decision. Consistent with § 300.707, the authorized official may investigate the information in the documents provided by all appropriate means, including questioning the covered individual or any other person who submitted a statement in support of his claim, and

consulting with the Selective Service System. The official will examine the individual's request and make his or her own conclusion as to whether the failure to register was knowing and willful. The decision of OPM is final. There is no further right to administrative review.

(c) OPM will provide the agency and the individual who requested reconsideration with a copy of its decision.

(d) If OPM affirms the agency's determination that the failure to register was knowing and willful, the agency must cease considering the individual for appointment or, if the individual is a current employee, initiate steps to terminate his employment.

[FR Doc. 2011–30788 Filed 11–28–11; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Parts 1, 5, 16, 28, and 160

[Docket No. OCC–2011–0019]

RIN 1557–AD36

Alternatives to the Use of External Credit Ratings in the Regulations of the OCC

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) contains two directives to Federal agencies including the OCC. First, section 939A directs all Federal agencies to review, no later than one year after enactment, any regulation that requires the use of an assessment of creditworthiness of a security or money market instrument and any references to, or requirements in, such regulations regarding credit ratings. Second, the agencies are required to remove any references to, or requirements of reliance on, credit ratings and substitute such standard of credit-worthiness as each agency determines is appropriate. The statute further provides that the agencies shall seek to establish, to the extent feasible, uniform standards of creditworthiness, taking into account the entities the agencies regulate and the purposes for which those entities would rely on such standards.

Through this notice of proposed rulemaking (NPRM), the OCC seeks comment on a proposal to revise its regulations pertaining to investment securities, securities offerings, and foreign bank capital equivalency deposits to replace references to credit ratings with alternative standards of creditworthiness.

The OCC also is proposing to amend its regulations pertaining to financial subsidiaries of national banks to better reflect the language of the underlying statute, as amended by section 939(d) of the Dodd-Frank Act.

DATES: Comments must be received by December 29, 2011.

ADDRESSES: Commenters are encouraged to use the title ''Alternatives to the Use of Credit Ratings in the Regulations of the OCC'' to facilitate the organization and review of comments. Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Alternatives to the Use of Credit Ratings in the Regulations of the OCC'' to facilitate the organization and review of the comments. You may submit comments by any of the following methods:

- *Federal eRulemaking Portal—''Regulations.gov'':* Go to *http://www.regulations.gov,* under the ''More Search Options'' tab click next to the ''Advanced Docket Search'' option where indicated, select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2011–0019'' to submit or view public comments and to view supporting and related materials for this proposed rule. The ''How to Use This Site'' link on the Regulations.gov home page provides information on using Regulations.gov, including instructions for submitting or viewing public comments, viewing other supporting and related materials, and viewing the docket after the close of the comment period.
- *Email: regs.comments@occ.treas.gov*.
- *Mail:* Office of the Comptroller of the Currency, 250 E Street SW., Mail Stop 2–3, Washington, DC 20219.
- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street SW., Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket Number OCC–2011–0019'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this proposed rulemaking by any of the following methods:

- *Viewing Comments Electronically:* Go to *http://www.regulations.gov,* under the ''More Search Options'' tab click next to the ''Advanced Document Search'' option where indicated, select ''Comptroller of the Currency'' from the agency drop-down menu, then click ''Submit.'' In the ''Docket ID'' column, select ''OCC–2011–0019'' to view public comments for this rulemaking action.
- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: Kerri Corn, Director for Market Risk, Credit and Market Risk Division, (202) 874–4660; Carl Kaminski, Senior Attorney, or Kevin Korzeniewski, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Eugene H. Cantor, Counsel, Securities and Corporate Practices Division, (202) 874–5210, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

I. Background

Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] (the Dodd-Frank Act) contains two directives to Federal agencies including the OCC. First, section 939A directs all Federal agencies to review, no later than one year after enactment, any regulation that requires the use of an assessment of creditworthiness of a security or money market instrument and any references to or requirements in such regulations regarding credit ratings. Second, the

[1] Public Law 111–203, Section 939A, 124 Stat. 1376, 1887 (July 21, 2010).

agencies are required to remove references to, or requirements of reliance on, credit ratings and substitute such standard of creditworthiness as each agency determines is appropriate. The statute further provides that the agencies shall seek to establish, to the extent feasible, uniform standards of creditworthiness, taking into account the entities the agencies regulate and the purposes for which those entities would rely on those standards.

This NPRM describes the areas where the regulations of the OCC, other than those that establish regulatory capital requirements, currently reference credit ratings; sets forth the considerations underlying such reliance; and then requests comment on the alternatives we propose to replace credit ratings in those provisions. In connection with this NPRM, the OCC is simultaneously seeking comment on guidance to help explain the due diligence national banks and Federal savings associations should conduct in purchasing investment securities for their investment portfolios and to reiterate supervisory expectations for the securities the institution actually purchases. This proposed guidance is published elsewhere in this issue of the **Federal Register.**

The regulations subject to this proposal generally require banks to determine whether a particular security or issuance qualifies, or does not qualify, for a specific treatment. For example, the OCC's investment securities regulations generally require a bank to determine whether or not a security is ''investment grade'' in order to determine whether purchasing the security is permissible. By contrast, some aspects of the OCC's risk-based capital regulations require a bank to place exposures (for example, securitization exposures) into one of several categories based on gradations of risk, which, in some cases under the current rules, may be determined by reference to nationally recognized statistical rating organizations (NRSROs) [2] credit ratings. This type of granular risk measurement requires fundamentally different, more complex analyses than the analysis required to make the binary—or ''yes/no''—determinations necessary for the rules subject to this proposal. Separately, the OCC and the other Federal banking agencies issued a joint advance notice of proposed rulemaking on the agencies' use of credit ratings in risk-based capital frameworks,[3] and we continue our efforts to explore the development of alternative standards appropriate for those frameworks.

A. Non-Capital Regulations That Reference Credit Ratings Regulations Applicable to National Banks and Federal Branches of Foreign Banks

The OCC's regulations on permissible investment securities, securities offerings, and foreign bank capital equivalency deposits each reference or rely on credit ratings issued by NRSROs. These regulations are described below.

Investment Securities

The OCC's investment securities regulations at 12 CFR part 1 use credit ratings as a factor for determining the credit quality, marketability, and appropriate concentration levels of investment securities purchased and held by national banks. Under the OCC rules, an investment security must not be ''predominantly speculative in nature.'' The OCC rules provide that an obligation is not ''predominantly speculative in nature'' if it is rated investment grade or, if unrated, is the credit equivalent of investment grade. ''Investment grade,'' in turn, is defined as a security rated in one of the four highest rating categories by two or more NRSROs (or one NRSRO if the security has been rated by only one NRSRO).

Credit ratings also are used to determine marketability in the case of a security that is offered and sold under the Securities and Exchange Commission's (SEC) Rule 144A.[4] Under part 1, a 144A security is deemed to be marketable if it is rated investment grade or the credit equivalent of investment grade. In addition, credit ratings are used to determine concentration limits on certain investment securities. For example, OCC rules limit holdings of so-called ''Type IV'' securities of any one obligor that are rated in the third highest investment grade rating categories to 25 percent of the bank's capital and surplus.[5] There is no concentration limit for small business-related securities that are rated in the highest or second highest investment grade categories.

Securities Offerings

Securities issued by national banks are not covered by the registration provisions and SEC regulations governing other issuers' securities under the Securities Act of 1933. However, the OCC has adopted 12 CFR part 16 to require disclosures related to national bank-issued securities. Part 16 includes references to ''investment grade'' ratings. For example, § 16.6, which provides an optional abbreviated registration system for debt securities that meet certain criteria, requires that a security receive an investment grade credit rating to qualify for the abbreviated registration system.

International Banking Activities

Under section 4(g) of the International Banking Act (IBA),[6] each foreign bank with a Federal branch or agency must establish and maintain a capital equivalency deposit (CED) with a member bank located in the state where the Federal branch or agency is located. The IBA authorizes the OCC to prescribe regulations describing the types and amounts of assets that qualify for inclusion in the CED, ''as necessary or desirable for the maintenance of a sound financial condition, the protection of depositors, creditors, and the public interest.'' [7] At 12 CFR 28.15, OCC regulations set forth the types of assets eligible for inclusion in a CED. Among these assets are certificates of deposit that are payable in the United States and banker's acceptances, provided that, in either case, the issuer or the instrument is rated investment grade by an internationally recognized rating organization, and neither the issuer nor the instrument is rated lower than investment grade by any such rating organization that has rated the issuer or the instrument.

Regulations Applicable to Federal Savings Associations

Under Title III of the Dodd-Frank Act, on July 21, 2011, the rulemaking authority of the Office of Thrift Supervision (OTS) for Federal savings associations under the Home Owner's Loan Act transferred to the OCC.[8] To facilitate the OCC's enforcement and administration of former OTS rules and to make appropriate changes to these rules to reflect OCC supervision of Federal savings associations, the OCC republished the OTS regulations, with

[2] A nationally recognized statistical rating organization (NRSRO) is an entity registered with the U.S. Securities and Exchange Commission (SEC) as an NRSRO under section 15E of the Securities Exchange Act of 1934. *See,* 15 U.S.C. 78o–7, as implemented by 17 CFR 240.17g–1.

[3] 75 FR 53823 (Aug. 25, 2010).

[4] Rule 144A provides a safe harbor from the registration requirements of the Securities Act of 1933 for certain private resales of restricted securities to qualified institutional buyers. The restricted securities that fall under this safe harbor are generally referred to as 144A securities.

[5] A Type IV investment security includes certain small business related-securities, commercial mortgage-related securities, or residential mortgage-related securities. *See* 12 CFR 1.2(m).

[6] 12 U.S.C. 3102(g).

[7] 12 U.S.C. 3102(g)(4).

[8] For a more detailed description of the allocation of jurisdiction over savings associations and savings and loan holding companies affected by the Dodd-Frank Act, see 76 FR 48950 (August 9, 2011).

nomenclature and other technical changes, in the Code of Federal Regulations at Chapter I, parts 100 through 197 (Republished Regulations), effective on July 21, 2011.[9]

The lending and investment regulations for Federal savings associations, now codified at 12 CFR part 160, use credit ratings as a factor for determining the credit quality, liquidity, and marketability. For example, under these rules, for a Federal savings association to purchase an investment security, the security must be ''[r]ated in one of the four highest categories as to the portion of the security in which the association is investing by a nationally recognized investment rating service at its most recently published rating before the date of purchase by the association.'' [10]

In addition, lending regulations for all Federal savings associations, now codified at 12 CFR part 160, subpart B, establish appropriate concentration levels of investment securities purchased and held by Federal savings associations. For example, § 160.40 limits holdings of corporate debt securities of any one issuer that are rated in the third or fourth highest investment grade rating categories to 15 percent of the association's capital and surplus. For securities that are rated in the highest or second highest investment grade categories, that limit is 25 percent of the savings association's capital and surplus.[11]

Credit ratings also are used to determine marketability in the case of a security that is offered and sold pursuant to the SEC's Rule 144A. As previously noted, a 144A security is generally deemed to be marketable if it is rated investment grade.

B. Advance Notices of Proposed Rulemaking

On August 13, 2010, the OCC published an advance notice of proposed rulemaking (ANPR) that identified the references to credit ratings in its regulations at 12 CFR parts 1, 16, and 28 and requested comment on alternative creditworthiness standards.[12] On October 14, 2010, the OTS published a similar ANPR describing the references to credit ratings in the non-capital regulations applicable to savings associations, including the OTS's investment securities regulations.[13] Together, the ANPRs generally described, and requested comment on, four alternative frameworks for measuring creditworthiness to replace existing references to credit ratings.

One alternative described in the ANPRs was the use of an approach currently contained in the existing investment securities regulations which permit a national bank or Federal savings association to purchase unrated securities. (An unrated security is one that does not have a credit rating issued by an NRSRO.) Under this approach, the national bank or Federal savings association would make the determination as to whether the security is the ''credit equivalent'' of investment grade by conducting and documenting its own credit assessment and analysis. This determination would be subject to examiner review, and national banks and Federal savings associations would continue to be expected to understand and manage the associated price, liquidity and other related risks associated with their investment securities activities.

The ANPRs outlined a second alternative by redefining the ''investment grade'' standard to focus on a broader set of criteria than the current creditworthiness standard. The current standard focuses primarily on the timely repayment of principal and interest and the risk of default and references credit ratings for that purpose. A broader standard could take into account criteria for marketability, liquidity, and price risk associated with market volatility, while removing references to credit ratings. National banks and Federal savings associations would be required to consider these broader standards in making determinations on whether securities are ''investment grade.'' These determinations would be subject to examiner review.

A third option in the ANPRs was to permit national banks and Federal savings associations to use internal loan classification systems to rate investment securities. This option borrows from both existing classification systems used by the Federal banking agencies to identify problem loans and the bank's or savings association's internal risk rating systems. The banking agencies classify loans on a scale reflecting decreasing credit quality. Generally, well-performing loans are rated ''pass.'' Troubled loans are rated ''special mention,'' ''substandard,'' ''doubtful,'' or ''loss,'' depending on the quality of the credit. In their respective ANPRs, the OCC and the OTS suggested defining all investments classified ''special mention'' or worse as predominately speculative and thus not ''investment grade.''

Finally, the OTS ANPR outlined a fourth alternative to using credit ratings that would permit savings associations to consider external data, including external data and credit analyses provided by third parties, to make a creditworthiness determination. Alternative ways to measure credit risk might be to derive ''implied ratings'' from the market price of traded instruments. The implied rating could be derived from the price of equities, debt instruments, or credit default swaps linked to the security. Investors typically require a higher return for an investment with a higher risk of default. For example, a yield spread (the difference between the yield on a corporate bond relative to a government bond with similar maturity) is often used as a measure of relative creditworthiness. A larger credit spread reflects a lower credit quality and higher perceived risk of the issuer's default.

In addition to the proposed alternative frameworks for considering creditworthiness without reference to credit ratings, the agencies set forth criteria that appear to be most relevant to evaluating potential creditworthiness standards. The agencies requested comment on whether other considerations should be taken into account. Specifically, the ANPRs stated that any alternative creditworthiness standard should:

- Foster prudent risk management;
- Be transparent, replicable, and well defined;
- Allow different banking organizations to assign the same assessment of credit quality to the same or similar credit exposures;
- Allow for supervisory review;
- Differentiate among investments in the same asset class with different credit risk; and
- Provide for the timely and accurate measurement of negative and positive changes in investment quality, to the extent practicable.

C. Comments Received on the ANPRs

Notwithstanding the requirements of section 939A of the Dodd-Frank Act, a majority of commenters on the ANPRs

[9] To make it easier for Federal savings associations to use the republished rules, the OCC has preserved where possible the OTS's numbering system by republishing these regulations with OCC part numbers that correspond to the former OTS rules, specifically, by changing the ''5'' to a ''1''. For example, 12 CFR part 560 was republished as 12 CFR part 160.

[10] 12 CFR 160.40(a)(2).

[11] A Federal savings association may invest up to 10 percent of its capital and surplus in commercial paper rated in the highest category by at least two NRSROs, and corporate debt securities rated in one of the two highest categories by at least one NRSRO. This is in addition to being able to invest another 15 percent of its capital and surplus in these securities pursuant to its lending authority. 12 CFR 160.93(d)(5).

[12] 75 FR 49423 (Aug. 13, 2010).

[13] 75 FR 63107 (Oct. 14, 2010).

said that the agencies should continue to use credit ratings. Most commenters argued that credit ratings are a valuable tool for national banks and Federal savings associations (herein, referred to collectively as ''banks'')—especially small banks—for measuring credit risk. Several commenters expressed doubt that any of the suggested alternatives for measuring creditworthiness would yield results that would be as useful and cost-effective as credit ratings. The commenters suggested that passage of the Dodd-Frank Act, specifically measures adding to the SEC's oversight authority over NRSROs, would improve the accuracy of credit ratings. A number of commenters stated that the agencies should interpret the statute in a manner that would permit the continued use of credit ratings or permit banks to consider credit ratings as one of several factors when measuring credit risk.

Commenters on the ANPRs focused largely on two issues: Competitive equity and compliance burden. Community and regional bank commenters argued that the inability to use credit ratings in evaluating investments could disadvantage them when compared with larger institutions that have advanced analytical capabilities. Larger internationally active banks expressed concern that they will be disadvantaged when compared to their foreign counterparts who may continue to use external credit ratings. Commenters also stated that developing internal rating systems to replace the long-standing use of NRSRO credit ratings would involve cost considerations greater than those under the current regulation, without a corresponding benefit to risk management. While commenters noted that cost and burden would be a factor for all banks, it would likely be more pronounced for community and regional banks. These smaller institutions may not currently have in-house the systems and management capabilities to convert quickly to new standards. Commenters noted that if smaller financial institutions are unable to develop processes necessary to comply with the new standard, it would prevent them from purchasing many of the investment securities they are currently permitted to hold. Thus, commenters stated that a cost-effective, simple standardized approach to measuring credit risk would be particularly important for community and regional banks.

Commenters generally agreed with and supported the factors and criteria set forth in the ANPRs as important for evaluating potential creditworthiness standards. Commenters suggested that, in establishing alternative creditworthiness measures, the agencies also should seek to avoid regulatory arbitrage, create parity with international standards, avoid oversimplified measures, dampen systemic risk, capture market complexities, identify appropriate time horizons, and allow for accurate and timely reassessments. Commenters further suggested that the agencies should consider transparency, replicability, assessment speed, ease of use, consistency across different regulated entities, and the existence of credit support.

II. Description of the Proposed Amendments to Non-Capital Regulations

The OCC is proposing to amend the definition of ''investment grade'' to remove the current reference to credit ratings and to replace other references to credit ratings with alternative standards of creditworthiness for the purposes of its regulations at 12 CFR parts 1, 16, 28, and 160.

Parts 1, 16, and 160

This proposal generally removes references to credit ratings provided by NRSROs and instead generally requires national banks and Federal savings associations to make assessments of a security's creditworthiness, similar to the assessments currently required for the purchase of unrated securities.

National Bank Regulations

Under the proposed amendments to parts 1 and 16, a security would be ''investment grade'' if the issuer of the security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. The ''adequate capacity to meet financial commitments'' standard would replace language in §§ 1.2 and 16.2 which currently reference NRSRO credit ratings. To meet this new standard, national banks must be able to determine that the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.[14]

When determining whether a particular issuer has an adequate capacity to meet financial commitments under a security for the projected life of the asset or exposure, the OCC expects national banks to consider a number of factors, to the extent appropriate. While external credit ratings and assessments remain valuable sources of information and provide national banks with a standardized credit risk indicator, banks must supplement the external ratings with due diligence processes and analyses that are appropriate for the bank's risk profile and for the size and complexity of the instrument. Therefore, it would be possible that a security rated in the top four rating categories by an NRSRO may not satisfy the proposed revised investment grade standard. Further information for national banks seeking to comply with the new regulations is being issued as proposed guidance at the same time as this NPRM.

Additionally, 12 CFR 1.3(e)(2) of the current rules imposes a concentration limit on a national bank's purchases of certain small business-related securities for its own account. The provision limits a national bank's purchase of covered small business-related securities to 25 percent of the bank's capital and surplus unless the securities are rated in the highest two investment grade rating categories. The OCC is proposing to amend this provision to remove the limit since it is not required by statute. However, under the OCC's proposed amendment, national banks still may purchase only those securities that meet the statutory creditworthiness criteria set forth in the definition of small business-related securities in section 3(a)(53)(A) of the Securities Exchange Act of 1934.[15] Currently, the statutory criteria include a requirement that the security be rated in one of the four highest investment grade rating categories by an NRSRO. However, the Dodd-Frank Act provides that this ratings-based requirement will be removed by July 21, 2012, and replaced with an alternative standard developed by the SEC.

Similarly, §§ 1.2(m)(2) and (3) include references to NRSRO credit ratings and references the definition of ''mortgage-related security'' in section 3(a)(41) of the Securities Exchange Act of 1934.[16] This statutory definition includes a requirement that the security be rated in the top two investment grade categories by an NRSRO. Like the definition of small business-related security, the Dodd-Frank Act removes the reference to credit ratings in July 2012 and directs the SEC to develop an alternative creditworthiness standard. Consistent with the Dodd-Frank Act, the OCC is proposing to delete the explicit references to credit ratings in its

[14] In the case of a structured finance transaction, principal and interest repayment is not necessarily solely reliant on the direct debt repaying capacity of the issuer or obligor. That is, the credit risk profile may be influenced more by the quality of the underlying collateral as well as the cash flow rules and the structure of the security itself than by the condition of the issuer.

[15] 15 U.S.C. 78c(a)(53)(A).

[16] 15 U.S.C. 78c(a)(41).

regulations at 12 CFR 1.2(m)(2) and (3). However, these provisions would continue to refer to the definition of mortgage-related security in the Securities Exchange Act of 1934.

Federal Savings Association Regulations

Notably, under current law, savings associations generally are prohibited by statute from investing in corporate debt securities unless they are rated ''investment grade'' by an NRSRO.[17] However, the Dodd-Frank Act provides that on July 21, 2012, this statutory requirement will be replaced by ''standards of creditworthiness established by the [FDIC].'' [18] In this NPRM, the OCC is proposing to define the term ''investment grade,'' as it is used in Part 160, to refer to 12 U.S.C. 1831e. Therefore, it will continue to reference the current ratings-based requirement until such time as that requirement is replaced by the FDIC.

Additionally, in § 160.40, the regulations applicable to Federal savings associations distinguish between commercial paper rated in the highest two rating categories, and in § 160.93, the regulations distinguish between commercial paper rated in the highest rating category and corporate debt securities rated in the two highest rating categories. Section 160.40(a)(1)(ii) generally provides that Federal savings associations may invest in commercial paper only if it rated in the highest two investment grade categories or guaranteed by a company with such a rating. Section 160.93(d)(5)(i) provides a less restrictive lending limitation for commercial paper that is rated in the highest rating category, and § 160.93(d)(5)(ii) provides a less restrictive lending limitation for corporate debt securities rated in the two highest rating categories. In this NPRM, the OCC is proposing to remove these references to credit ratings. Under the revised rules, Federal savings associations would be permitted to invest in commercial paper if it meets the standards set forth at 12 U.S.C. 1831e(d)(1), which currently limits all savings associations to purchasing corporate debt securities that are of investment grade, but will, after July 21, 2012, include a new creditworthiness standard established by the FDIC. Additionally, the less restrictive lending limitations would apply to all commercial paper and corporate debt securities that meet the revised creditworthiness standards.

Finally, at § 160.42, Federal savings associations are subject to certain limitations with regard to purchases of state and local government obligations. Currently, Federal savings associations may hold state or municipal revenue bonds that have ratings in one of the four highest investment grade rating categories from one issuer up to a limit of 10 percent of total capital without prior OCC approval. Under the revised rules, this provision would apply to state or municipal revenue bonds if the issuer has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.

Safety and Soundness Regulations

In addition to regulatory provisions that generally limit national banks and Federal savings associations to purchasing securities that are of investment grade, OCC regulations require that national banks and Federal savings associations conduct their investment activities in a manner that is consistent with safe and sound practices.[19] Specifically, national banks and Federal savings associations must consider the interest rate, credit, liquidity, price and other risks presented by investments, and the investments must be appropriate for the particular bank.[20] In addition to determining whether a security is of investment grade, national banks and Federal savings associations with substantial securities portfolios, in particular, must have and maintain robust risk management frameworks in place to ensure that an investment in a particular security appropriately fits within its goals and that the institution will remain in compliance with all relevant concentration limits.

Consistency With Other Federal Regulations

Consistent with section 939A's directive that the Federal agencies seek to establish, to the extent feasible, uniform standards of creditworthiness, in developing this proposal, the OCC has considered the approaches in the two recent proposals issued by the SEC,[21] as well as a recent proposal issued by the National Credit Union Administration (NCUA).[22]

On March 9, 2011, the SEC published a notice of proposed rulemaking to implement Section 939A with respect to its regulations governing investments made by mutual funds.[23] The proposal includes replacing creditworthiness standards that reference credit ratings with standards that would reflect evaluating other criteria. The proposal would replace a requirement that a security purchased by a money-market mutual fund be rated in ''one of the two highest short-term rating categories'' with a standard that the security have minimal credit risk. The determination would be based on factors pertaining to credit quality and the issuer's ability to meet its short-term financial obligations. Under the SEC's proposed rule 2a–7, while the board of directors of a mutual fund must independently determine that an investment has minimal risk, they would be permitted to continue using credit ratings as one factor to make that determination.[24]

On May 6, 2011, the SEC published a proposal to amend additional rules, including the Broker-Dealer Net Capital Rule, to remove references to credit ratings.[25] The Net Capital Rule currently applies lower capital requirements to certain types of securities held by broker-dealers if the securities are rated in high rating categories by at least two NRSROs. Under the proposal, to receive a favorable treatment for commercial paper, nonconvertible debt, and preferred stock, a broker-dealer would be required to establish, maintain, and enforce written policies and procedures designed to assess the credit and liquidity risks applicable to a security, and based on this process, would have to determine that the investment has only a ''minimal amount of credit risk.''

Under the SEC's proposed amendments, a broker-dealer could consider various factors in assessing the credit risk for a security. These factors could include credit spreads, securities-related research, internal or external credit risk assessments (including credit

[17] 12 U.S.C. 1831e(d)(1).

[18] Public Law 111–203, Section 939(a)(2) (July 21, 2010).

[19] 12 CFR 1.5; 12 CFR 160.1(b), 160.40(c).

[20] 12 CFR 1.5(a); 12 CFR 160.1(b), 160.40(c).

[21] *See* 76 FR 12896 (March 9, 2011); 76 FR 26550 (May 6, 2011).

[22] 76 FR 11164 (March 1, 2011).

[23] 76 FR 12896 (March 9, 2011).

[24] Specifically, the SEC proposal states:

Nothing in the proposed rule would prohibit a money market fund from relying on policies and procedures it has adopted to comply with the current rule as long as the board concluded that the [credit] ratings specified in the policies and procedures establish similar standards to those proposed and are credible and reliable for that use.

76 FR 12899 n.32. The SEC's March 9 proposal also notes that in addition to referencing credit ratings, the SEC rules already require a mutual fund board of directors to determine that a security meets the requisite investment standards based on factors ''in addition to any ratings assigned.'' Thus, under the SEC's current rule a mutual fund may not purchase an investment based on the credit rating alone.

[25] 76 FR 26550 (May 6, 2011).

ratings), and default statistics. The SEC proposal's preamble states that the criteria are meant to capture securities that should generally qualify as investment grade under the current ratings-based standard ''without placing undue reliance on third-party credit ratings.'' Similarly, the OCC's amendments would allow national banks and Federal savings associations to review multiple factors in evaluating the creditworthiness of a security.

On March 1, 2011, the NCUA published a proposal to amend a number of its regulations to remove references to credit ratings and replace those references with narratives based on ratings descriptions published by Standard and Poor's and Fitch.[26] For example, where NCUA regulations refer to an investment with an ''AA'' rating, the proposal would revise the reference to refer to a security that a credit union determines has a ''very strong capacity to meet financial commitments.'' Similarly, where NCUA regulations currently refer to an investment with an ''A'' rating, the proposal would revise the reference to refer to a security that a credit union determines has a ''strong capacity to meet financial commitments,'' in line with the S&P definition; and likewise, where NCUA regulations currently refer to an investment with a ''BBB'' rating, the proposal would revise the reference to refer to a security that a credit union determines has an ''adequate'' capacity to meet financial commitments. Under the NCUA proposal, a Federal credit union must reach these conclusions through its own analysis, rather than exclusively relying on credit ratings. However, part of that analysis may include the consideration of credit ratings.

The NCUA proposal also provides that when a Federal credit union considers the creditworthiness of a security, the credit union must consider whether the security will continue to have the capacity to meet financial commitments, *even under adverse economic conditions.* The OCC is not currently proposing to include similar language in its investment securities regulations. However, the OCC invites comment on whether such a standard would be appropriate, and on how such a standard could be implemented.

In the preamble to its proposal, the NCUA stated that it has and will continue to require Federal credit unions to conduct internal credit analyses that go beyond simple reliance on credit ratings, therefore, the NCUA does not believe that the proposed approach would result in significant changes for most Federal credit unions. Similarly, the OCC's proposed amendments would not change the OCC's continuing expectation that national banks and Federal savings associations consider and evaluate multiple factors when evaluating the creditworthiness of a security, and that they supplement the use of external ratings with due diligence processes and analyses that are appropriate for the bank's risk profile and for the size and complexity of the instrument.

Part 28—Foreign Banking Institutions

The OCC's capital equivalency deposit regulation at 12 CFR 28.15 currently allows for the use of certificates of deposit or bankers' acceptances as part of the deposit, if its issuer is rated investment grade by an internationally recognized rating organization. The OCC proposes to remove the requirement referencing credit ratings provided by ratings organizations. Instead, the issuer of the certificate of deposit or banker's acceptance must have ''an adequate capacity to meet financial commitments for the projected life of the asset or exposure.''

Part 5—Financial Subsidiaries

Finally, the OCC is proposing to make a technical change to 12 CFR 5.39, which pertains to financial subsidiaries of national banks. Currently, this regulation contains language that appeared in Section 5136A of title LXII of the Revised Statutes (12 U.S.C. 24a), as added by the Gramm-Leach-Bliley Act.[27] Prior to its amendment by the Dodd-Frank Act, section 5136A permitted a national bank, directly or indirectly, to control a financial subsidiary or hold an interest in a financial subsidiary only if the bank was one of the largest 100 insured depository institutions and has at least one issue of outstanding debt rated in one of the top three investment grade categories by an NRSRO. The Dodd-Frank Act amended section 5136A to remove the reference to investment grade ratings.[28]

The OCC is proposing to revise this provision to conform with the revised statutory language. The new language would provide that a national bank may, directly or indirectly, control a financial subsidiary or hold an interest in a financial subsidiary only if the bank is one of the 100 largest insured banks *and* the bank has not fewer than one issue of outstanding debt that meets such applicable standard or criteria established by the Treasury Department and the Federal Reserve Board pursuant to Section 5136A of title LXII of the Revised Statutes (12 U.S.C. 24a).

III. Implementation Guidance

Together with this NPRM, the OCC is publishing proposed updates and revisions to its guidance for national bank and Federal savings association investment activities. This guidance reflects the OCC's expectations for national banks and Federal savings associations as they review their systems and consider any changes necessary to comply with the revisions proposed in this NPRM. The guidance describes factors institutions should consider with respect to certain types of investment securities to assess creditworthiness and continue conducting their activities in a safe and sound manner. Commenters are strongly encouraged to review and provide comment on the guidance in conjunction with their review of and comment on this NPRM.

As noted above, OCC regulations require that national banks and Federal savings associations conduct their investment activities in a manner that is consistent with safe and sound practices.[29] Neither this NPRM, nor the proposed guidance, would change this requirement. The OCC expects national banks and Federal savings associations to continue to follow safe and sound practices in their investment activities.

IV. Request for Comment

The OCC seeks comment on all aspects of this NPRM and the revised proposed revision to the term ''investment grade'' as it is referenced in the OCC's regulations pertaining to investment securities, securities offerings, and foreign bank capital equivalency deposits. Commenters are also strongly encouraged to provide comments on the proposed guidance the OCC released in connection with this NPRM, which describes how national banks and Federal savings associations could implement the new standards. In addition, the OCC seeks comment on the specific questions set forth below.

1. Does the proposed revision to the definition of investment grade satisfy the OCC's stated goals of applying a standard that:

- Fosters prudent risk management;
- Is transparent, replicable, and well defined;

[26] 76 FR 11164 (March 1, 2011).

[27] Public Law 106–102, Section 121, 113 Stat. 1338, 1373–81 (Nov. 12, 1999).

[28] Public Law 111–203 at Section 939(d), 124 Stat. at 1886.

[29] 12 CFR 1.5; 12 CFR 160.1(b), 160.40(c).

• Allows different banks or savings associations to assign the same or similar assessment of credit quality to the same or similar credit exposures;

• Allows for supervisory review;

• Differentiates among investments in the same asset class with different credit risk; and

• Provides for the timely and accurate measurement of negative and positive changes in investment quality, to the extent practicable?

2. Commenters on the ANPRs suggested a number of additional objectives to consider in developing creditworthiness standards, including avoidance of regulatory arbitrage; avoidance of oversimplified measures; dampening systemic risk; capturing market complexities; identifying appropriate time horizons; and, allowing for accurate and timely reassessments. Does the OCC's proposed revision to the definition of ''investment grade'' satisfy these objectives? What changes could the OCC make to the proposed investment grade definition to better address these objectives?

3. The OCC recognizes that any measure of creditworthiness likely will involve tradeoffs between more refined differentiation of creditworthiness and greater implementation burden. Does the proposed revised definition strike an appropriate balance between measurement of credit risk and implementation burden in considering alternative measures of creditworthiness? Are there other alternatives permissible under Dodd-Frank Section 939A that strike a more appropriate balance?

4. The OCC notes that the proposed ''investment grade'' standard for national bank investment securities activities is generally consistent with proposals published by the SEC and the NCUA (although the OCC's proposed standard does not include the NCUA's provision specifically referencing the consideration of adverse economic circumstances). The OCC requests comment on whether establishing consistent standards is appropriate in light of the different types of entities subject to OCC, SEC, and NCUA jurisdiction.

5. This proposal would apply separate creditworthiness standards for national bank and Federal savings association investments in corporate debt securities. The OCC requests comment on how best to align these standards consistent with section 939A's direction that Federal agencies shall seek to establish, to the extent feasible, uniform standards of creditworthiness.

V. Regulatory Analyses

A. Paperwork Reduction Act

This notice of proposed rulemaking amends several regulations for which the OCC currently has approved collections of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520) (OMB Control Nos. 1557–0014; 1557–0190; 1557–0120; 1557–0205). The amendments in this proposal do not introduce any new collections of information into the rules, nor do they amend the rules in a way that substantively modifies the collections of information that OMB has previously approved. Therefore, no additional OMB PRA approval is required at this time.

B. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act,[30] (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined for purposes of the RFA to include banks with assets less than or equal to $175 million) and publishes its certification and a short, explanatory statement in the **Federal Register** along with its rule.

This proposal would affect all 578 small national banks and all 288 small federally chartered savings associations.[31] However, because banks have long been expected to maintain a risk management process to ensure that credit risk is effectively identified, measured, monitored, and controlled, most if not all of the institutions affected by the proposed rule already engage in appropriate risk management activity. Although the proposed rule will affect a substantial number of small banks and federally chartered savings associations, it will not have a significant effect on a substantial number of those institutions. Therefore, the OCC certifies that the proposed rule would not have a significant impact on a substantial number of small entities.

C. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (UMRA) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in the expenditure by state, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more (adjusted annually for inflation) in any one year. If a budgetary impact statement is required, section 205 of the UMRA also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule.

The OCC has determined that its proposed rule would not result in expenditures by state, local, and Tribal governments, or by the private sector, of $100 million or more. Accordingly, the OCC has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

List of Subjects

12 CFR Part 1

Banks, Banking, National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 16

National banks, Reporting and recordkeeping requirements, Securities.

12 CFR Part 28

Foreign banking, National banks, Reporting and recordkeeping requirements.

12 CFR Part 160

Banks, Banking, Consumer protection, Investments, manufactured homes, Mortgages, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

Department of the Treasury

Office of the Comptroller of the Currency

12 CFR Chapter I

Authority and Issuance

For the reasons stated in the preamble, the Office of the Comptroller of the Currency proposes to amend parts 1, 16, 28, and 160 of chapter I of Title 12, Code of Federal Regulations as follows:

PART 1—INVESTMENT SECURITIES

1. The authority citation for part 1 continues to read as follows:

Authority: 12 U.S.C. 1, *et seq.,* 12 U.S.C. 24 (Seventh), and 12 U.S.C. 93a.

2. In part 1, in § 1.2, revise paragraphs (d) through (f), and (h), and (m) through (n), as follows:

§ 1.2 Definitions.

* * * * *

(d) *Investment grade* means the issuer of a security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments

[30] 5 U.S.C. 605(b).

[31] All totals are as of June 30, 2011.

if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.

(e) *Investment security* means a marketable debt obligation that is investment grade and not predominately speculative in nature.

(f) *Marketable* means that the security:

(1) Is registered under the Securities Act of 1933, 15 U.S.C. 77a *et seq.;*

(2) Is a municipal revenue bond exempt from registration under the Securities Act of 1933, 15 U.S.C. 77c(a)(2);

(3) Is offered and sold pursuant to Securities and Exchange Commission Rule 144A, 17 CFR 230.144A, and investment grade; or

(4) Can be sold with reasonable promptness at a price that corresponds reasonably to its fair value.

* * * * *

(h) [reserved]

* * * * *

(m) *Type IV security* means:

(1) A small business-related security as defined in section 3(a)(53)(A) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(53)(A), that is fully secured by interests in a pool of loans to numerous obligors.

(2) A commercial mortgage-related security that is offered or sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), that is investment grade, or a commercial mortgage-related security as described in section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41), that represents ownership of a promissory note or certificate of interest or participation that is directly secured by a first lien on one or more parcels of real estate upon which one or more commercial structures are located and that is fully secured by interests in a pool of loans to numerous obligors.

(3) A residential mortgage-related security that is offered and sold pursuant to section 4(5) of the Securities Act of 1933, 15 U.S.C. 77d(5), that is investment grade, or a residential mortgage-related security as described in section 3(a)(41) of the Securities Exchange Act of 1934, 15 U.S.C. 78c(a)(41)) that does not otherwise qualify as a Type I security.

(n) *Type V security* means a security that is:

(1) Investment grade;

(2) Marketable;

(3) Not a Type IV security; and

(4) Fully secured by interests in a pool of loans to numerous obligors and in which a national bank could invest directly.

3. In § 1.3, revise paragraphs (e) and (h) as follows:

§ 1.3 Limitations on dealing in, underwriting, and purchase and sale of securities.

* * * * *

(e) *Type IV securities.* A national bank may purchase and sell Type IV securities for its own account. The amount of the Type IV securities that a bank may purchase and sell is not limited to a specified percentage of the bank's capital and surplus.

* * * * *

(h) *Pooled investments*—(1) *General.* A national bank may purchase and sell for its own account investment company shares provided that:

(i) The portfolio of the investment company consists exclusively of assets that the national bank may purchase and sell for its own account; and

(ii) The bank's holdings of investment company shares do not exceed the limitations in section 1.4(e).

(2) *Other issuers.* The OCC may determine that a national bank may invest in an entity that is exempt from registration as an investment company under section 3(c)(1) of the Investment Company Act of 1940, provided that the portfolio of the entity consists exclusively of assets that a national bank may purchase and sell for its own account.

(3) Investments made under this paragraph (h) must comply with section 1.5 of this part, conform with applicable published OCC precedent, and must be:

(i) Marketable and investment grade, or

(ii) Satisfy the requirements of § 1.3(i).

* * * * *

PART 5—RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES

4. The authority citation for part 5 continues to read as follows:

Authority: 12 U.S.C. 1, *et seq.,* 12 U.S.C. 93a, 215a–2, 215a–3, 481, and section 5136A of the Revised Statutes (12 U.S.C. 24a).

5. In § 5.39, revise paragraphs (g)(3) through (5) and (j)(2) to read as follows:

§ 5.39 Financial subsidiaries.

* * * * *

(g) * * *

(3) The national bank is one of the 100 largest insured banks, determined on the basis of the bank's consolidated total assets at the end of the calendar year; and

(4) The bank has not fewer than one issue of outstanding debt that meets such applicable standard or criteria established by the Treasury Department and the Federal Reserve Board pursuant to Section 5136A of title LXII of the Revised Statutes (12 U.S.C. 24a).

(5) Paragraph (g)(3) does not apply if the financial subsidiary is engaged solely in activities in an agency capacity.

* * * * *

(j) * * *

(2) *Eligible debt requirement.* A national bank that does not continue to meet the qualification requirements set forth in paragraphs (g)(3) and (g)(4) of this section, applicable where the bank's financial subsidiary is engaged in activities other than solely in an agency capacity, may not directly or through a subsidiary, purchase or acquire any additional equity capital of any such financial subsidiary until the bank meets the requirement in paragraph (g)(3) and (g)(4) of this section. For purposes of this paragraph (j)(2), the term ''equity capital'' includes, in addition to any equity investment, any debt instrument issued by the financial subsidiary if the instrument qualifies as capital of the subsidiary under federal or state law, regulation, or interpretation applicable to the subsidiary.

* * * * *

PART 16—SECURITIES OFFERING DISCLOSURE RULES

6. The authority citation for part 16 continues to read as follows:

Authority: 12 U.S.C. 1, *et seq.,* 12 U.S.C. 93a.

7. In § 16.2, revise paragraph (g) as follows:

§ 16.2 Definitions.

* * * * *

(g) *Investment grade* means the issuer of a security has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.

* * * * *

8. In § 16.6, revise paragraph (a)(4) as follows:

§ 16.6 Sales of nonconvertible debt.

(a) * * *

(4) The debt is investment grade.

* * * * *

PART 28—INTERNATIONAL BANKING ACTIVITIES

9. The authority citation for part 28 continues to read as follows:

Authority: 12 U.S.C. 1 *et seq.,* 24 (Seventh), 93a, 161, 602, 1818, 3101 *et seq.,* and 3901 *et seq.*

10. In § 28.15, revise paragraph (a)(1)(iii) as follows:

§ 28.15 Capital equivalency deposits.

(a) * * * (1) * * *

(iii) Certificates of deposit, payable in the United States, and banker's acceptances, provided that, in either case, the issuer has an adequate capacity to meet financial commitments for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected

* * * * *

PART 160—LENDING AND INVESTMENT

11. The authority citation for part 160 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1701j–3, 1828, 3803, 3806, 5412(b)(2)(B); 42 U.S.C. 4106.

12. In § 160.3, add the following definition in alphabetical order:

§ 160.3 Definitions.

* * * * *

Investment grade means a security that meets the creditworthiness standards described in 12 U.S.C. 1831e.

* * * * *

13. In § 160.40, revise paragraphs (a)(1)(i) and (a)(2)(ii) as follows:

§ 160.40 Commercial paper and corporate debt securities.

(a) * * * (1) * * *

(i) Investment grade as of the date of purchase; or

(ii) Guaranteed by a company having outstanding paper that meets the standard set forth in paragraph (a)(1)(i) of this section.

(2) * * *

(i) * * *

(ii) Investment grade.

* * * * *

14. In § 160.42, revise paragraphs (a) and (d) to read as follows:

§ 160.42 State and local government obligations.

(a) Pursuant to HOLA section 5(c)(1)(H), a Federal savings association may invest in obligations issued by any state, territory, possession, or political subdivision thereof (''governmental entity''), subject to appropriate underwriting and the following conditions:

	Aggregate limitation	Per-issuer limitation
(1) General obligations	None	None.
(2) Other obligations of a governmental entity (*e.g.,* revenue bonds) if the issuer has an adequate capacity to meet financial commitments under the security for the projected life of the asset or exposure. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected.	None	10% of the institution's total capital.
(3) Obligations of a governmental entity that do not qualify under any other paragraph but are approved by the OCC.	As approved by the OCC	10% of the institution's total capital.

* * * * *

(d) For all securities, the institution must perform its own detailed analysis of credit quality. In doing so, the institution must consider, as appropriate, the interest rate, credit, liquidity, price, transaction, and other risks associated with the investment activity and determine that such investment is appropriate for the institution. The institution must also determine that the obligor has adequate resources and willingness to provide for all required payments on its obligations in a timely manner.

* * * * *

15. In § 160.93, revise paragraph (d)(5) introductory text and paragraph (d)(5)(i) to read as follows:

§ 160.93 Lending limitations.

(d) * * *

(5) Notwithstanding the limit set forth in paragraphs (c)(1) and (c)(2) of this section, a savings association may invest up to 10 percent of unimpaired capital and unimpaired surplus in the obligations of one issuer evidenced by:

(i) Commercial paper or corporate debt securities that are, as of the date of purchase, investment grade.

* * * * *

16. In § 160.121, revise paragraphs (b)(1) and (2) to read as follows:

§ 160.93.121 Investments in state housing corporations.

(b) * * *

(1) The obligations are investment grade; or

(2) The obligations are approved by the OCC. The aggregate outstanding direct investment in obligations under paragraph (b) of this section shall not exceed the amount of the Federal savings association's total capital.

* * * * *

Dated: November 18, 2011.

John Walsh,

Acting Comptroller of the Currency.

[FR Doc. 2011–30428 Filed 11–28–11; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1230]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to

qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before February 27, 2012.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1230, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and also are used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in those buildings.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
Unincorporated Areas of Tulare County, California					
California	Unincorporated Areas of Tulare County.	Lake Kaweah	Entire shoreline	None	+722
California	Unincorporated Areas of Tulare County.	Middle Fork Kaweah River	Approximately 1.0 mile downstream of the South Fork Kaweah River confluence.	+694	+722
			Approximately 0.5 mile downstream of the South Fork Kaweah River confluence.	+721	+722

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
ADDRESSES					
Unincorporated Areas of Tulare County					
Maps are available for inspection at the Tulare County Planning Division, 411 East Kern Avenue, Tulare, CA 93274.					
Unincorporated Areas of Chesterfield County Virginia					
Virginia	Unicorporated Areas of Chesterfield County.	Crooked Branch	At the upstream side of Centralia Road (State Route 145).	*147	*148
			At the upstream side of Hollyberry Drive	*172	*170
Virginia	Unincorporated Areas of Chesterfield County.	Dry Creek	At the upstream side of Hull Street (U.S. Route 360 Westbound).	None	*185
			Approximately 0.5 mile upstream of Hull Street (U.S. Route 360 Westbound).	None	*185
Virginia	Unincorporated Areas of Chesterfield County.	Great Branch (downstream).	At the Proctors Creek confluence	*94	*91
			Approximately 500 feet upstream of Hamlin Creek Parkway.	*102	*103
Virginia	Unincorporated Areas of Chesterfield County.	Great Branch (upstream)	Approximately 250 feet downstream of Chalkley Road.	*139	*141
			Approximately 1,450 feet upstream of Chalkley Road.	*148	*146
Virginia	Unincorporated Areas of Chesterfield County.	Johnson Creek	At the downstream side of Allied Road (State Route 287).	*9	*8
			Approximately 800 feet downstream of Spruce Avenue.	*18	*19
Virginia	Unincorporated Areas of Chesterfield County.	Johnson Creek Tributary	At the Johnson Creek confluence	*57	*55
			Approximately 320 feet upstream of East Hundred Road (State Route 10).	None	*57
Virginia	Unincorporated Areas of Chesterfield County.	Proctors Creek	Approximately 850 feet upstream of the Tributary 2 to Proctors Creek confluence.	*136	*137
			Approximately 1,200 feet upstream of State Route 288 Eastbound.	*177	*176
Virginia	Unincorporated Areas of Chesterfield County.	Winterpock Creek	Approximately 1.0 mile downstream of River Road (State Route 602).	None	*193
			Approximately 450 feet upstream of Beach Road (State Route 655).	None	*240

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Chesterfield County

Maps are available for inspection at 9800 Government Center Parkway, Chesterfield, VA 23832.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 18, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–30709 Filed 11–28–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket ID FEMA–2011–0002; Internal Agency Docket No. FEMA–B–1233]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1% annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this proposed rule is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before February 27, 2012.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community is available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–1233, to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–4064, or (email) *Luis.Rodriguez3@fema.dhs.gov.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

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Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

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Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

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Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
Unincorporated Areas of Mono County, California					
California	Unincorporated Areas of Mono County.	Blind Spring Valley	At the Spring Canyon Creek Benton confluence.	None	+5354

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
			Approximately 4.3 miles upstream of the Spring Canyon Creek Benton confluence	None	+5738
California	Unincorporated Areas of Mono County.	Shallow flooding	Approximately 2.3 miles southeast of the intersection of White Mountain Ranch Road and State Route 6.	None	#1
California	Unincorporated Areas of Mono County.	Shallow flooding	Approximately 2.7 miles southeast of the intersection of White Mountain Ranch Road and State Route 6.	None	#2
California	Unincorporated Areas of Mono County.	Shallow flooding	Approximately 3.0 miles northeast of the intersection of Goolsby Ranch Road and State Route 6.	None	#1
California	Unincorporated Areas of Mono County.	Shallow flooding	Approximately 2.9 miles northeast of the intersection of Chidago Way and Piute Lane.	None	#1
California	Unincorporated Areas of Mono County.	Shallow flooding	Approximately 2.9 miles southeast of the intersection of White Mountain Ranch Road and State Route 6.	None	#3
California	Unincorporated Areas of Mono County.	Spring Canyon Creek Benton.	Approximately 3.4 miles downstream of Goolsby Ranch Road.	None	+5226
			Approximately 1.3 miles upstream of Snipes Ranch Road.	None	+5483
California	Unincorporated Areas of Mono County.	Spring Canyon Creek Chalfant.	Approximately 3.1 miles upstream of the Inyo County boundary.	None	+4233
			Approximately 7.8 miles upstream of the Inyo County boundary	None	+4366
California	Unincorporated Areas of Mono County.	Spring Canyon Creek Hammil.	Approximately 3.1 miles downstream of the Willow Creek Aqueduct.	None	+4531
			Approximately 0.5 mile upstream of State Route 6	None	+4722

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Mono County

Maps are available for inspection at the Mono County Department of Public Works, 74 North School Street, Bridgeport, CA 93517.

City of Carson City, Nevada

Nevada	City of Carson City	Ash Canyon Creek	Approximately 1,460 feet west of the intersection of Ash Canyon Road and Wellington West Road.	#2	#1
			Approximately 110 feet upstream of Ormsby Boulevard	None	+4761
Nevada	City of Carson City	King Canyon Creek	Approximately 356 feet northeast of the intersection of Kings Canyon Road and Canyon Drive.	None	#2
			Approximately 142 feet upstream of Canyon Park Court	None	+4760
Nevada	City of Carson City	Shallow flooding	Approximately 657 feet northeast of the intersection of Mountain Street and Tahoe Drive.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 324 feet east of the intersection of Plaza Street and Ann Street.	None	#1

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
Nevada	City of Carson City	Shallow flooding	Approximately 237 feet northeast of the intersection of Washington Street and Bunker Hill Drive.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 422 feet northeast of the intersection of Washington Street and Richmond Avenue.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 100 feet northeast of the intersection of William Street and Stewart Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 300 feet southwest of the intersection of William Street and Valley Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 180 feet southwest of the intersection of John Street and Roop Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 289 feet southeast of the intersection of South Ormsby Boulevard and King Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 505 feet northwest of the intersection of Ormsby Drive and Kings Canyon Road.	None	#1
Nevada	City of Carson City	Shallow flooding	At the intersection of Minnesota Street and John Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 1,834 feet northwest of the intersection of Canyon Drive and Knoll Drive.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 959 feet northwest of the intersection of Christmas Tree Drive and Emily Court.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 203 feet west of the intersection of Ormsby Boulevard and Calaveras Drive.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 431 feet southwest of the intersection of Ormsby Boulevard and Calaveras Drive.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 536 feet northeast of the intersection of Kings Canyon Road and Canyon Drive.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 162 feet northeast of the intersection of North Plaza Street and Proctor Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 922 feet north of the intersection of Ormsby Drive and Comstock Circle.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 228 feet southeast of the intersection of Roop Street and East Musser Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 136 feet northwest of the intersection of North Walsh Street and East Musser Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 145 feet northwest of the intersection of North Fall Street and East Telegraph Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 104 feet northeast of the intersection of North Fall Street and East Telegraph Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 135 feet east of the intersection of Yorktown Drive and Lexington Avenue.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 343 feet east of the intersection of Yorktown Drive and Lexington Avenue.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 776 feet north of the intersection of Washington Street and Bunker Hill Drive.	None	#1

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified
Nevada	City of Carson City	Shallow flooding	Approximately 200 feet southwest of the intersection of South Ormsby Boulevard and King Street.	None	#1
Nevada	City of Carson City	Shallow flooding	At the intersection of Seely Loop and North Saliman Road.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 592 feet southeast of the intersection of Pittman Place and King Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 176 feet northwest of the intersection of Mary Street and North 5th Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 350 feet northwest of the intersection of King Street and South Iris Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 447 feet northeast of the intersection of West Musser Street and Mountain Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 106 feet east of the intersection of Nevada Street and Proctor Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 182 feet northeast of the intersection of Nevada Street and West 3rd Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 132 feet southeast of the intersection of Nevada Street and West 3rd Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 311 feet east of the intersection of U.S. Route 395 and West 2nd Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 311 feet north of the intersection of East Musser Street and North Fall Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 145 feet northeast of the intersection of North Fall Street and Proctor Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 306 feet southeast of the intersection of Roop Street and East 2nd Street.	None	#1
Nevada	City of Carson City	Shallow flooding	Approximately 302 feet west of the intersection of Ormsby Boulevard and Calaveras Drive.	None	#2
Nevada	City of Carson City	Shallow flooding	Approximately 0.37 mile southeast of the intersection of Williams Street and Roop Street.	None	#2
Nevada	City of Carson City	Shallow flooding	At the intersection of Washington Street and Ormsby Boulevard.	None	#2
Nevada	City of Carson City	Shallow flooding	At the intersection of North Saliman Road and Robinson Street.	None	#2
Nevada	City of Carson City	Shallow flooding	Approximately 467 feet east of the intersection of Mountain Street and Tahoe Drive.	None	#2
Nevada	City of Carson City	Shallow flooding	At the intersection of Goldfield Avenue and Saliman Road.	None	#2

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

∧ Mean Sea Level, rounded to the nearest 0.1 meter.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground ∧ Elevation in meters (MSL)	
				Existing	Modified

ADDRESSES

City of Carson City

Maps are available for inspection at the Planning Department, 2621 Northgate Lane, Suite 62, Carson City, NV 89706.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	
Shelby County, Alabama, and Incorporated Areas				
Acton Creek	Approximately 0.78 mile downstream of Indian Valley Road.	None	+428	City of Hoover, Unincorporated Areas of Shelby County.
	Approximately 595 feet upstream of Caldwell Mill Road.	None	+472	
Beaverdam Creek	At the Cahaba River confluence	None	+394	City of Helena, Unincorporated Areas of Shelby County.
	Approximately 775 feet downstream of County Road 17.	None	+424	
Bishop Creek	At the downstream side of Industrial Park Drive	+418	+423	City of Helena, City of Pelham, Town of Indian Springs Village, Unincorporated Areas of Shelby County.
	Approximately 483 feet upstream of Surrey Lane	+524	+525	
Buck Creek	Approximately 800 feet upstream of U.S. Route 261	+411	+412	City of Alabaster, City of Helena, City of Pelham, Unincorporated Areas of Shelby County.
	Approximately 0.9 mile upstream of County Road 340.	+564	+567	
Camp Creek (backwater effects from Kelly Creek).	Approximately 841 feet upstream of the Kelly Creek confluence.	None	+439	Unincorporated Areas of Shelby County.
	Approximately 0.7 mile upstream of the Kelly Creek confluence.	None	+439	
Coales Branch	At the upstream side of CSX Railroad Bridge	+442	+444	City of Pelham.
	Approximately 1,350 feet upstream of Dow Street	+492	+494	
Dodd Branch	Approximately 174 feet upstream of Lake Forest Circle.	+419	+421	City of Hoover, City of Pelham, Unincorporated Areas of Shelby County.
	Approximately 730 feet upstream of Indian Lake Lane.	None	+499	
Dodd Branch Tributary 1	Approximately 908 feet downstream of Baneberry Drive.	None	+445	City of Hoover, City of Pelham, Unincorporated Areas of Shelby County.
	Approximately 1,670 feet upstream of Indian Lake Way.	None	+487	
Dodd Branch Tributary 1.1	At the downstream side of Stratshire Lane	None	+453	City of Helena, City of Pelham.
	Approximately 413 feet upstream of Aaron Road	None	+485	
Dry Creek I	Approximately 0.47 mile downstream of Fox Valley Farms Road.	None	+422	City of Alabaster, City of Helena, Unincorporated Areas of Shelby County.
	Approximately 531 feet downstream of Fox Valley Farms Road.	None	+423	
Hogpen Creek	At the upstream side of the railroad	+449	+452	City of Pelham, Unincorporated Areas of Shelby County.
	Approximately 1,390 feet upstream of Berry Lane	None	+510	

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
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Hurricane Creek (backwater effects from Cahaba River).	Approximately 0.75 mile downstream of County Road 13.	None	+381	City of Helena, Unincorporated Areas of Shelby County.
	Approximately 0.8 mile upstream of County Road 13.	None	+381	
Hurricane Creek I (backwater effects from Bear Creek).	Approximately 1,365 feet downstream of Rocky Hollow Lane.	None	+464	Unincorporated Areas of Shelby County.
	Approximately 416 feet upstream of Rocky Hollow Lane.	None	+464	
Ivy Branch (backwater effects from North Fork Yellowleaf Creek).	At the downstream side of County Road 280 (Old Highway 280).	None	+683	City of Chelsea, Unincorporated Areas of Shelby County.
	Approximately 469 feet upstream of County Road 280 (Old Highway 280).	None	+683	
Lee Branch	Approximately 884 feet upstream of Cahaba Valley Road.	None	+553	City of Birmingham, City of Hoover, Unincorporated Areas of Shelby County.
	Approximately 350 feet upstream of Hugh Daniel Drive.	None	+608	
Lee Brook	At the upstream side of County Road 95	+416	+417	City of Helena.
	Approximately 965 feet upstream of Wynwood Drive	None	+477	
Little Beeswax Creek	Approximately 0.86 mile downstream of County Road 28.	+406	+405	Unincorporated Areas of Shelby County.
	Approximately 0.52 mile upstream of County Road 61.	+461	+463	
North Fork Yellowleaf Creek	Approximately 0.9 mile downstream of U.S. Route 280.	None	+575	City of Chelsea, Unincorporated Areas of Shelby County.
	Approximately 1.2 miles upstream of Highland Lakes Road.	None	+783	
North Fork Yellowleaf Creek Tributary I (backwater effects from North Fork Yellowleaf Creek).	At the North Fork Yellowleaf Creek confluence	None	+688	City of Chelsea, Unincorporated Areas of Shelby County.
	Approximately 946 feet upstream of the North Fork Yellowleaf confluence.	None	+688	
Peavine Creek	Approximately 1,213 feet downstream of U.S. Route 31.	+435	+441	City of Alabaster, City of Pelham, Unincorporated Areas of Shelby County.
	Approximately 1.7 miles upstream of County Road 334.	None	+577	
Poplar Branch (backwater effects from North Fork Yellowleaf Creek).	Approximately 138 feet upstream of U.S. Route 280	None	+531	City of Chelsea, Unincorporated Areas of Shelby County.
	Approximately 1,967 feet upstream of U.S. Route 280.	None	+531	
Prairie Brook	At the downstream side of Railroad Avenue East	+411	+416	City of Helena.
	Approximately 0.45 mile upstream of County Road 95.	+424	+425	
Trigger Creek (backwater effects from North Fork Yellowleaf Creek).	Approximately 1,024 feet downstream of County Road 13.	None	+399	City of Hoover, Unincorporated Areas of Shelby County.
	Approximately 1.02 miles upstream of County Road 13.	None	+399	
Wolf Creek I (backwater effects from Kelly Creek).	Approximately 0.45 mile upstream of the Kelly Creek confluence.	None	+456	Unincorporated Areas of Shelby County.
	Approximately 0.66 mile upstream of the Kelly Creek confluence.	None	+456	
Yellowleaf Creek Tributary 1 (backwater effects from North Fork Yellowleaf Creek).	Approximately 0.91 mile upstream of the Yellowleaf Creek confluence.	None	+456	City of Chelsea, Unincorporated Areas of Shelby County.
	Approximately 1.33 miles upstream of the Yellowleaf Creek confluence.	None	+456	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	

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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Alabaster
Maps are available for inspection at 201 1st Street North, Alabaster, AL 35007.

City of Birmingham
Maps are available for inspection at 710 20th Street North, Birmingham, AL 35203.

City of Chelsea
Maps are available for inspection at 11611 Chelsea Road, Chelsea, AL 35043.

City of Helena
Maps are available for inspection at 816 State Route 82, Helena, AL 35080.

City of Hoover
Maps are available for inspection at 100 Municipal Drive, Hoover, AL 35216.

City of Pelham
Maps are available for inspection at 3162 Pelham Parkway, Pelham, AL 35124.

Town of Indian Springs Village
Maps are available for inspection at 2635 Cahaba Valley Road, Indian Springs, AL 35124.

Unincorporated Areas of Shelby County
Maps are available for inspection at 200 West College Street, Columbiana, AL 35051.

Cobb County, Georgia, and Incorporated Areas

Buttermilk Creek	At the Sweetwater Creek confluence	+889	+892	City of Austell, Unincorporated Areas of Cobb County.
	Approximately 1.0 mile upstream of the Sweetwater Creek confluence.	+891	+892	
Chattahoochee River	Approximately 2.9 miles downstream of I–20	+761	+760	City of Smyrna, Unincorporated Areas of Cobb County.
	Approximately 1.8 miles upstream of Morgan Falls Dam.	+860	+861	
Concord Creek	At the Nickajack Creek confluence	+895	+894	Unincorporated Areas of Cobb County.
	Approximately 720 feet upstream of Auldyn Drive	+1000	+999	
Cooper Lake Creek	Approximately 1,200 feet upstream of the Nickajack Creek confluence.	+826	+825	City of Smyrna, Unincorporated Areas of Cobb County.
	At the upstream side of Gann Road Southeast	+891	+892	
Favor Creek	At the Nickajack Creek confluence	+916	+913	Unincorporated Areas of Cobb County.
	Approximately 1.55 miles upstream of the Nickajack Creek confluence.	+999	+1001	
Gilmore Creek	At the Chattahoochee River confluence	+775	+774	Unincorporated Areas of Cobb County.
	Approximately 0.64 mile upstream of the Chattahoochee River confluence.	+775	+774	
Gothards Creek	At the Sweetwater Creek confluence	+902	+905	Unincorporated Areas of Cobb County.
	At the Douglas County boundary	+906	+905	
Harmony Grove Creek	At the Willeo Creek confluence	+900	+898	Unincorporated Areas of Cobb County.
	At the upstream side of Johnson Ferry Road	+1053	+1052	
Laurel Creek	At the Nickajack Creek confluence	+807	+802	City of Smyrna, Unincorporated Areas of Cobb County.
	Approximately 500 feet upstream of Lee Street Southeast.	+986	+984	
Liberty Hill Branch	At the Queen Creek confluence	+770	+774	Unincorporated Areas of Cobb County.

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	Approximately 0.95 mile upstream of the Queen Creek confluence.	+913	+911	
Little Noonday Creek	At the Noonday Creek confluence	+906	+905	Unincorporated Areas of Cobb County.
	Approximately 0.5 mile upstream of the Noonday Creek confluence.	+906	+905	
Lost Mountain Creek	At the Wildhorse Creek confluence	+907	+903	City of Powder Springs, Unincorporated Areas of Cobb County.
	Approximately 1,250 feet upstream of Macedonia Road Southwest.	+940	+943	
Milam Branch	At the Queen Creek confluence	+902	+904	Unincorporated Areas of Cobb County.
	Approximately 200 feet upstream of Francis Circle Southwest.	+1010	+1013	
Mill Creek No. 2	At the Nickajack Creek confluence	+906	+902	Unincorporated Areas of Cobb County.
	Approximately 150 feet upstream of Hicks Road Southwest.	+965	+963	
Mud Creek	At the Noses Creek confluence	+912	+908	Unincorporated Areas of Cobb County.
	Approximately 0.4 mile upstream of the Noses Creek confluence.	+912	+911	
Nickajack Creek	At the Chattahoochee River confluence	+767	+764	City of Smyrna, Unincorporated Areas of Cobb County.
	Approximately 200 feet upstream of South Cobb Drive.	+1047	+1049	
Noonday Creek	At the Cherokee County boundary	+896	+895	City of Kennesaw, City of Marietta, Unincorporated Areas of Cobb County.
	Approximately 350 feet upstream of New Salem Road.	+1025	+1023	
Noonday Creek Tributary No. 4.	At the Noonday Creek confluence	+929	+927	Unincorporated Areas of Cobb County.
	Approximately 1,800 feet upstream of the Noonday Creek confluence.	+929	+928	
Noses Creek	At the Sweetwater Creek confluence	+892	+895	City of Austell, City of Marietta, City of Powder Springs, Unincorporated Areas of Cobb County.
	Approximately 450 feet upstream of Kennesaw Avenue.	+1083	+1081	
Olley Creek	At the Sweetwater Creek confluence	+892	+895	City of Austell, Unincorporated Areas of Cobb County.
	At the upstream side of Clay Road Southwest	+894	+895	
Powder Springs Creek	At the Sweetwater Creek confluence	+897	+901	City of Austell, City of Powder Springs, Unincorporated Areas of Cobb County.
	Approximately 1,750 feet upstream of Oglesby Road.	+900	+901	
Powers Branch	At the Chattahoochee River confluence	+794	+795	Unincorporated Areas of Cobb County.
	Approximately 1,060 feet upstream of the Chattahoochee River confluence.	+794	+795	
Queen Creek	At the Nickajack Creek confluence	+767	+764	Unincorporated Areas of Cobb County.
	At the upstream side of Mableton Parkway	+997	+999	
Rottenwood Creek	At the Chattahoochee River confluence	+778	+781	Unincorporated Areas of Cobb County.
	Approximately 1,300 feet upstream of the Chattahoochee River confluence.	+780	+781	
Smyrna Branch	At the Theater Branch confluence	+929	+930	City of Smyrna.
	Approximately 200 feet upstream of Powder Springs Street Southeast.	+997	+998	

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Sweat Mountain Creek	At the Willeo Creek confluence	+943	+941	Unincorporated Areas of Cobb County.
	Approximately 950 feet upstream of Wesley Chapel Road.	+1001	+1000	
Sweetwater Creek	Approximately 200 feet downstream of Old Alabama Road.	+888	+891	City of Austell, Unincorporated Areas of Cobb County.
	At the Paulding County boundary	+906	+909	
Theater Branch	At the Nickajack Creek confluence	+928	+923	City of Smyrna, Unincorporated Areas of Cobb County.
	At the downstream side of Parkway Drive Southeast.	+973	+975	
Timber Ridge Branch	At the Willeo Creek confluence	+862	+863	Unincorporated Areas of Cobb County.
	Approximately 1.22 miles upstream of the Willeo Creek confluence.	+882	+879	
Ward Creek	At the Noses Creek confluence	+926	+924	Unincorporated Areas of Cobb County.
	Approximately 0.4 mile upstream of the Noses Creek confluence.	+926	+925	
Wildhorse Creek	At the Noses Creek confluence	+907	+903	City of Powder Springs, Unincorporated Areas of Cobb County.
	Approximately 700 feet upstream of Arapaho Drive	+952	+953	
Willeo Creek	Approximately 1,000 feet upstream of the Chattahoochee River confluence.	+862	+863	Unincorporated Areas of Cobb County.
	Approximately 400 feet upstream of the Sweat Mountain Creek confluence.	+945	+942	

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ADDRESSES

City of Austell
Maps are available for inspection at City Hall, 2716 Broad Street Southwest, Austell, GA 30106.

City of Kennesaw
Maps are available for inspection at City Hall, 2529 J. O. Stephenson Avenue, Kennesaw, GA 30144.

City of Marietta
Maps are available for inspection at the Public Works Department, 205 Lawrence Street, Marietta, GA 30060.

City of Powder Springs
Maps are available for inspection at City Hall, 4484 Marietta Street, Powder Springs, GA 30127.

City of Smyrna
Maps are available for inspection at the Engineer's Office, 2800 King Street, Smyrna, GA 30080.

Unincorporated Areas of Cobb County
Maps are available for inspection at the Cobb County Development and Inspection Department, 205 Lawrence Street, Marietta, GA 30060.

Coweta County, Georgia, and Incorporated Areas

Chattahoochee River	Approximately 1,850 feet downstream of the Heard County boundary.	None	+686	Unincorporated Areas of Coweta County.
	Approximately 4.1 miles upstream of the Cedar Creek confluence.	None	+720	
Little Wahoo Creek	Approximately 150 feet upstream of the Wahoo Creek confluence.	+800	+799	Unincorporated Areas of Coweta County.
	Approximately 1.49 miles upstream of Fast Guard Farms.	+868	+869	
Snake Creek	At the Wahoo Creek confluence	+795	+799	City of Newnan, Unincorporated Areas of Coweta County.

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	Approximately 0.5 mile upstream of Dixon Street	+929	+927	
Tributary 1 to Snake Creek	At the Snake Creek confluence	+873	+875	City of Newnan.
	Approximately 1,125 feet upstream of Pickens Drive	+896	+897	
Tributary 1 to Wahoo Creek	At the Wahoo Creek confluence	+843	+842	City of Newnan, Unincorporated Areas of Coweta County.
	Approximately 400 feet upstream of Wood Trail	+947	+941	
Tributary 10 to Wahoo Creek	At the Wahoo Creek confluence	+881	+880	City of Newnan.
	Approximately 0.63 mile upstream of the Wahoo Creek confluence.	+933	+934	
Tributary 11 to Wahoo Creek	At the Wahoo Creek confluence	+882	+881	City of Newnan.
	Approximately 1,400 feet upstream of Roberts Road	+901	+906	
Tributary 12 to Wahoo Creek	At the Wahoo Creek confluence	+891	+897	City of Newnan.
	Approximately 600 feet upstream of Dewey Street	+942	+944	
Tributary 2 to Snake Creek	At the Snake Creek confluence	+890	+892	City of Newnan.
	Approximately 700 feet upstream of Maple Drive	+931	+928	
Tributary 2 to Wahoo Creek	At the Wahoo Creek confluence	+867	+860	City of Newnan, Unincorporated Areas of Coweta County.
	Approximately 1,200 feet upstream of Jefferson Street	+921	+920	
Tributary 3 to Wahoo Creek	At the Tributary 2 to Wahoo Creek confluence	+867	+868	City of Newnan.
	At the upstream side of Matador Way	+882	+885	
Tributary 4 to Wahoo Creek	At the Tributary 3 to Wahoo Creek confluence	+872	+871	City of Newnan.
	Approximately 360 feet upstream of the detention pond.	+880	+885	
Tributary 5 to Wahoo Creek	At the Tributary 2 to Wahoo Creek confluence	+874	+879	City of Newnan.
	Approximately 580 feet upstream of the Tributary 2 to Wahoo Creek confluence.	+884	+888	
Tributary 6 to Wahoo Creek	Approximately 210 feet upstream of the Tributary 2 to Wahoo Creek confluence.	+881	+882	City of Newnan.
	Approximately 140 feet upstream of Ashley Park Drive.	+893	+897	
Tributary 7 to Wahoo Creek	At the Wahoo Creek confluence	+867	+860	City of Newnan, Unincorporated Areas of Coweta County.
	Approximately 1,650 feet upstream of Marathon Street.	+897	+898	
Tributary 8 to Wahoo Creek	At the Wahoo Creek confluence	+867	+861	City of Newnan.
	Approximately 0.41 mile upstream of the Wahoo Creek confluence.	+897	+899	
Tributary 9 to Wahoo Creek	At the Wahoo Creek confluence	+875	+874	City of Newnan.
	Approximately 1,800 feet upstream of the Wahoo Creek confluence.	+904	+905	
Wahoo Creek	At the Chattahoochee River confluence	None	+701	City of Newnan, Unincorporated Areas of Coweta County.
	Approximately 960 feet upstream of Paul Street	+946	+945	

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ADDRESSES

City of Newnan

Maps are available for inspection at the Public Works Department, 25 LaGrange Street, Newnan, GA 30263.

Unincorporated Areas of Coweta County

Maps are available for inspection at the Coweta County Development and Engineering Department, 21 East Washington Street, Newnan, GA 30263.

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Douglas County, Georgia, and Incorporated Areas				
Anneewakee Creek	At the Chattahoochee River confluence	+747	+749	Unincorporated Areas of Douglas County.
	Approximately 1,900 feet upstream of the Anneewakee Creek Tributary B confluence.	+748	+749	
Anneewakee Creek Tributary A.	At the Anneewakee Creek confluence	+747	+749	Unincorporated Areas of Douglas County.
	Approximately 910 feet upstream of the Anneewakee Creek confluence.	+748	+749	
Anneewakee Creek Tributary B.	At the Anneewakee Creek confluence	+747	+749	Unincorporated Areas of Douglas County.
	Approximately 500 feet upstream of the Anneewakee Creek confluence.	+748	+749	
Bear Creek	At the upstream side of the Chattahoochee River confluence.	+741	+740	Unincorporated Areas of Douglas County.
	Approximately 2,000 feet upstream of State Route 166.	+741	+740	
Beaver Creek	At the Sweetwater Creek confluence	+868	+871	Unincorporated Areas of Douglas County.
	Approximately 500 feet upstream of Patty Court	None	+1006	
Beaver Creek Tributary A	At the Beaver Creek confluence	None	+914	Unincorporated Areas of Douglas County.
	Approximately 0.52 mile upstream of the Beaver Creek confluence.	None	+953	
Camp Branch	At the Hurricane Creek confluence	None	+975	Unincorporated Areas of Douglas County.
	Approximately 1,200 feet upstream of the Camp Branch Tributary A confluence.	None	+1062	
Camp Branch Tributary A	At the Camp Branch confluence	None	+1043	Unincorporated Areas of Douglas County.
	Approximately 750 feet upstream of the Camp Branch confluence.	None	+1066	
Chattahoochee River	At the Carroll County boundary	+728	+730	City of Douglasville, Unincorporated Areas of Douglas County.
	At the Cobb County boundary	+761	+760	
Dog River	At the Chattahoochee River confluence	+738	+736	Unincorporated Areas of Douglas County.
	Approximately 1,200 feet upstream of the Chattahoochee River confluence.	+738	+736	
Dry Creek	At the Beaver Creek confluence	None	+891	Unincorporated Areas of Douglas County.
	Approximately 1,050 feet upstream of Lee Road	None	+988	
Dry Creek Tributary A	At the Dry Creek confluence	None	+898	Unincorporated Areas of Douglas County.
	Approximately 0.53 mile upstream of the Dry Creek confluence.	None	+925	
Dry Creek Tributary B	At the Dry Creek confluence	None	+928	Unincorporated Areas of Douglas County.
	Approximately 1,170 feet upstream of the Dry Creek confluence.	None	+944	
Dry Creek Tributary C	At the Dry Creek confluence	None	+943	Unincorporated Areas of Douglas County.
	Approximately 1,900 feet upstream of the Dry Creek confluence.	None	+969	
Gordon Creek	At the Sweetwater Creek confluence	+878	+881	City of Douglasville, Unincorporated Areas of Douglas County.
	At the Cobb County boundary	+897	+898	
Gothards Creek	At the Cobb County boundary	None	+905	Unincorporated Areas of Douglas County.
	Approximately 1.35 miles upstream of Cedar Mountain Road.	None	+1042	
Gothards Creek Tributary 1	At the Gothards Creek confluence	None	+906	Unincorporated Areas of Douglas County.

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	Approximately 1,040 feet upstream of the Gothards Creek confluence.	None	+908	
Gothards Creek Tributary 10	At the Gothards Creek confluence	None	+946	Unincorporated Areas of Douglas County.
	Approximately 0.68 mile upstream of the Gothards Creek confluence.	None	+970	
Gothards Creek Tributary 11	Approximately 250 feet upstream of the Gothards Creek confluence.	+947	+948	Unincorporated Areas of Douglas County.
	Approximately 1.03 miles upstream of the Gothards Creek Tributary 11.3 confluence.	None	+1063	
Gothards Creek Tributary 11.1.	At the Gothards Creek Tributary 11 confluence	None	+972	Unincorporated Areas of Douglas County.
	Approximately 200 feet upstream of Cedar Mountain Road.	None	+987	
Gothards Creek Tributary 11.2.	At the Gothards Creek Tributary 11 confluence	None	+985	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 1.05 miles upstream of the Gothards Creek Tributary 11 confluence.	None	+1100	
Gothards Creek Tributary 11.3.	At the Gothards Creek Tributary 11 confluence	None	+1006	Unincorporated Areas of Douglas County.
	Approximately 0.49 mile upstream of the Gothards Creek Tributary 11 confluence.	None	+1042	
Gothards Creek Tributary 12	At the Gothards Creek confluence	None	+961	Unincorporated Areas of Douglas County.
	Approximately 0.60 mile upstream of the Gothards Creek confluence.	None	+1000	
Gothards Creek Tributary 15	At the Gothards Creek confluence	None	+980	Unincorporated Areas of Douglas County.
	Approximately 350 feet upstream of County Services Road.	None	+1013	
Gothards Creek Tributary 2 ..	At the Gothards Creek confluence	None	+909	Unincorporated Areas of Douglas County.
	Approximately 0.78 mile upstream of the Gothards Creek confluence.	None	+995	
Gothards Creek Tributary 2.1	At the Gothards Creek confluence	None	+907	Unincorporated Areas of Douglas County.
	At the Gothards Creek Tributary 2 divergence	None	+966	
Gothards Creek Tributary 3 ..	At the Gothards Creek confluence	None	+910	Unincorporated Areas of Douglas County.
	Approximately 1,100 feet upstream of Boyd Road	None	+1095	
Gothards Creek Tributary 3.1	At the Gothards Creek Tributary 3	None	+917	Unincorporated Areas of Douglas County.
	Approximately 640 feet upstream of Greystone Lane	None	+1057	
Gothards Creek Tributary 3.2	At the Gothards Creek Tributary 3 confluence	None	+928	Unincorporated Areas of Douglas County.
	At the upstream side of Cody Lane	None	+951	
Gothards Creek Tributary 4 ..	At the Paulding County boundary	None	+935	Unincorporated Areas of Douglas County.
	Approximately 1,650 feet upstream of the Paulding County boundary.	None	+961	
Gothards Creek Tributary 4.1	At the Paulding County boundary	None	+938	Unincorporated Areas of Douglas County.
	Approximately 0.39 mile upstream of the Paulding County boundary.	None	+980	
Gothards Creek Tributary 4.1.1.	At the Paulding County boundary	None	+933	Unincorporated Areas of Douglas County.
	Approximately 650 feet upstream of Bearden Road	None	+972	
Gothards Creek Tributary 6 ..	At the Gothards Creek confluence	None	+926	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 300 feet upstream of Maroney Mill Road.	None	+941	
Gothards Creek Tributary 8 ..	At the Gothards Creek confluence	+939	+940	City of Douglasville, Unincorporated Areas of Douglas County.

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	Approximately 0.95 mile upstream of the Gothards Creek Tributary 8.1 confluence.	None	+1084	
Gothards Creek Tributary 8.1	At the Gothards Creek Tributary 8 confluence	None	+977	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 0.67 mile upstream of the Gothards Creek Tributary 8 confluence.	None	+1030	
Gothards Creek Tributary 9	At the Gothards Creek confluence	None	+945	Unincorporated Areas of Douglas County.
	Approximately 0.46 mile upstream of the Gothards Creek confluence.	None	+962	
Hickory Creek	At the Beaver Creek confluence	None	+926	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 0.52 mile upstream of Burnt Hickory Road.	None	+1043	
Hickory Creek Tributary A	At the Hickory Creek confluence	None	+958	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 1,650 feet upstream of U.S. Route 20	None	+999	
Hickory Creek Tributary B	At the Hickory Creek confluence	None	+959	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 650 feet upstream of September Way	None	+1036	
Hickory Creek Tributary C	At the Hickory Creek confluence	None	+983	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 350 feet upstream of Magnolia Trail	None	+1036	
Hickory Creek Tributary D	At the Hickory Creek confluence	None	+999	Unincorporated Areas of Douglas County.
	Approximately 1,250 feet upstream of Lakeland Hills Drive.	None	+1046	
Hickory Creek Tributary E	At the Hickory Creek confluence	None	+1007	Unincorporated Areas of Douglas County.
	Approximately 0.47 mile upstream of the Hickory Creek confluence.	None	+1056	
Huey Creek	At the Paulding County boundary	None	+931	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 1,150 feet upstream of Brown Street	None	+1083	
Huey Creek Tributary 1	At the Huey Creek confluence	None	+940	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 0.91 mile upstream of the Huey Creek Tributary 1.1 confluence.	None	+1095	
Huey Creek Tributary 1.1	At the Huey Creek Tributary 1 confluence	None	+1004	Unincorporated Areas of Douglas County.
	Approximately 1,550 feet upstream of the Huey Creek Tributary 1 confluence.	None	+1067	
Huey Creek Tributary 2	At the Huey Creek confluence	None	+976	Unincorporated Areas of Douglas County.
	Approximately 350 feet upstream of Huey Road	None	+1017	
Huey Creek Tributary 3	At the Huey Creek confluence	None	+976	Unincorporated Areas of Douglas County.
	Approximately 300 feet upstream of Pirkle Road	None	+1038	
Hurricane Creek	At the Carroll County boundary	None	+727	Unincorporated Areas of Douglas County.
	Approximately 1.10 miles upstream of the Tyree Branch confluence.	None	+1201	
Hurricane Creek Tributary A	At the Hurricane Creek confluence	None	+747	Unincorporated Areas of Douglas County.
	Approximately 0.66 mile upstream of the Hurricane Creek confluence.	None	+796	
Hurricane Creek Tributary B	At the Hurricane Creek confluence	None	+784	Unincorporated Areas of Douglas County.
	Approximately 1,450 feet upstream of the Hurricane Creek confluence.	None	+832	

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Hurricane Creek Tributary C	At the Hurricane Creek confluence	None	+940	Unincorporated Areas of Douglas County.
	Approximately 0.38 mile upstream of the Hurricane Creek confluence.	None	+980	
Hurricane Creek Tributary D	At the Hurricane Creek confluence	None	+958	Unincorporated Areas of Douglas County.
	Approximately 0.53 mile upstream of the Hurricane Creek confluence.	None	+1012	
Hurricane Creek Tributary E	At the Hurricane Creek confluence	None	+976	Unincorporated Areas of Douglas County.
	Approximately 1,921 feet upstream of Tweeddale Drive.	None	+1022	
Kraft Creek	At the Hurricane Creek confluence	None	+1019	Unincorporated Areas of Douglas County.
	Approximately 450 feet upstream of Kraft Drive	None	+1045	
Kraft Creek Tributary A	At the Kraft Creek confluence	None	+1031	Unincorporated Areas of Douglas County.
	Approximately 950 feet upstream of the Kraft Creek confluence.	None	+1057	
Lion Branch	At the Beaver Creek confluence	None	+900	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 200 feet upstream of East Melissa Lane.	None	+1060	
Lion Branch Tributary A	At the Lion Branch confluence	None	+932	Unincorporated Areas of Douglas County.
	Approximately 0.50 mile upstream of Trail Creek Drive.	None	+992	
Lion Branch Tributary B	At the Lion Branch confluence	None	+962	Unincorporated Areas of Douglas County.
	Approximately 250 feet upstream of Bottlebrush Drive	None	+987	
Little Hurricane Creek	At the Hurricane Creek confluence	None	+866	Unincorporated Areas of Douglas County.
	Approximately 450 feet upstream of Summer Hill Drive.	None	+1066	
Little Hurricane Creek Tributary A.	At the Little Hurricane Creek confluence	None	+927	Unincorporated Areas of Douglas County.
	Approximately 0.73 mile upstream of Gable Drive	None	+990	
Margie Branch	At the Beaver Creek confluence	None	+942	Unincorporated Areas of Douglas County.
	Approximately 0.45 mile upstream of the Margie Branch Tributary A confluence.	None	+1074	
Margie Branch Tributary A	At the Margie Branch confluence	None	+1028	Unincorporated Areas of Douglas County.
	Approximately 1,800 feet upstream of the Margie Branch confluence.	None	+1079	
Mill Creek	At the Gothards Creek confluence	None	+931	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 200 feet upstream of Crystal Creek Place.	None	+1091	
Mill Creek Tributary 1	At the Mill Creek confluence	None	+972	City of Douglasville.
	Approximately 0.85 mile upstream of the Mill Creek confluence.	None	+1061	
Miller Creek	At the Beaver Creek confluence	None	+927	Unincorporated Areas of Douglas County.
	Approximately 600 feet upstream of Miller Street	None	+969	
Miller Creek Tributary A	At the Miller Creek confluence	None	+927	Unincorporated Areas of Douglas County.
	Approximately 1,450 feet upstream of the Miller Creek confluence.	None	+983	
Palmer Branch	At the Sweetwater Creek confluence	+758	+757	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 0.56 mile upstream of the Palmer Branch Tributary C confluence.	None	+900	
Palmer Branch Tributary A	At the Palmer Branch confluence	None	+789	City of Douglasville.

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	Approximately 0.55 mile upstream of the Palmer Branch confluence.	None	+935	
Palmer Branch Tributary B ...	At the Palmer Branch confluence	None	+807	City of Douglasville.
	Approximately 0.53 mile upstream of the Palmer Branch confluence.	None	+882	
Palmer Branch Tributary C ...	At the Palmer Branch confluence	None	+855	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 1,850 feet upstream of Washington Drive.	None	+1005	
Park Creek	At the Sweetwater Creek confluence	+883	+885	Unincorporated Areas of Douglas County.
	Approximately 800 feet upstream of Sinyard Road	None	+968	
Pine Creek	At the Sweetwater Creek confluence	+887	+889	Unincorporated Areas of Douglas County.
	At the Cobb County boundary	+888	+890	
Pinewood Branch	At the Park Creek confluence	+884	+885	Unincorporated Areas of Douglas County.
	Approximately 600 feet upstream of Paces Drive	None	+949	
Pinewood Branch Tributary A	At the Pinewood Branch confluence	None	+900	Unincorporated Areas of Douglas County.
	Approximately 1,100 feet upstream of Plantation Drive	None	+987	
Shell Creek	At the Hurricane Creek confluence	None	+994	Unincorporated Areas of Douglas County.
	Approximately 0.78 mile upstream of Shell Road	None	+1099	
Shoals Branch	At the Sweetwater Creek confluence	+766	+768	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 1.27 miles upstream of the Shoals Branch Tributary B confluence.	None	+975	
Shoals Branch Tributary A	At the Shoals Branch confluence	None	+827	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 0.44 mile upstream of the Shoals Branch confluence.	None	+923	
Shoals Branch Tributary B	At the Shoals Branch confluence	None	+842	Unincorporated Areas of Douglas County.
	Approximately 1,100 feet upstream of the Shoals Branch confluence.	None	+877	
Spivey Branch	At the Hickory Creek confluence	None	+944	Unincorporated Areas of Douglas County.
	Approximately 0.82 mile upstream of the Spivey Branch Tributary B confluence.	None	+1086	
Spivey Branch Tributary A	At the Spivey Branch confluence	None	+965	Unincorporated Areas of Douglas County.
	Approximately 550 feet upstream of Ivy Brooke Drive	None	+1040	
Spivey Branch Tributary B	At the Spivey Branch confluence	None	+978	Unincorporated Areas of Douglas County.
	Approximately 0.38 mile upstream of the Spivey Branch confluence.	None	+1007	
Sweetwater Creek	Approximately 85 feet downstream of the Palmer Branch confluence.	+758	+757	City of Austell, City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 450 feet upstream of the Cobb County boundary.	+889	+892	
Sweetwater Creek Tributary A.	Approximately 1,450 feet upstream of the Sweetwater Creek confluence.	+757	+758	City of Douglasville.
	Approximately 1,000 feet upstream of Riverside Parkway.	None	+799	
Sweetwater Creek Tributary B.	Approximately 1,400 feet upstream of the Sweetwater Creek confluence.	None	+757	City of Douglasville.
	Approximately 0.47 mile upstream of the Sweetwater Creek confluence.	None	+788	
Sweetwater Creek Tributary C.	Approximately 1,800 feet upstream of the Sweetwater Creek confluence.	+757	+758	City of Douglasville, Unincorporated Areas of Douglas County.

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	Approximately 0.77 mile upstream of the Sweetwater Creek confluence.	None	+797	
Sweetwater Creek Tributary D.	Approximately 0.48 mile upstream of the Sweetwater Creek confluence.	+757	+758	City of Douglasville.
	Approximately 1.52 miles upstream of the Sweetwater Creek confluence.	None	+856	
Sweetwater Creek Tributary E.	At the Sweetwater Creek confluence	+785	+778	Unincorporated Areas of Douglas County.
	Approximately 0.88 mile upstream of the Sweetwater Creek confluence.	None	+900	
Sweetwater Creek Tributary F.	At the Sweetwater Creek confluence	+874	+876	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 750 feet upstream of Factory Shoals Road.	None	+964	
Sweetwater Creek Tributary G.	At the Sweetwater Creek confluence	+876	+878	City of Douglasville, Unincorporated Areas of Douglas County.
	Approximately 800 feet upstream of Trae Lane	None	+1002	
Sweetwater Creek Tributary H.	At the Sweetwater Creek confluence	+877	+879	City of Douglasville, Unincorporated Areas of Douglas County.
	At the Cobb County boundary	None	+911	
Sweetwater Creek Tributary I	At the Sweetwater Creek confluence	+880	+882	Unincorporated Areas of Douglas County.
	Approximately 250 feet upstream of White Flag Trail	None	+918	
Sweetwater Creek Tributary J.	At the Sweetwater Creek confluence	+885	+887	City of Austell, Unincorporated Areas of Douglas County.
	Approximately 1,200 feet upstream of State Route 6 (Thornton Road).	None	+946	
Sweetwater Creek Tributary K.	At the Sweetwater Creek confluence	+885	+887	City of Austell, Unincorporated Areas of Douglas County.
	Approximately 0.51 mile upstream of U.S. Route 78 (Bankhead Highway).	None	+921	
Sweetwater Creek Tributary L.	At the Cobb County boundary	None	+906	Unincorporated Areas of Douglas County.
	Approximately 1,250 feet upstream of Brownsville Road.	None	+1057	
Sweetwater Creek Tributary L.2.	At the Sweetwater Creek Tributary L confluence	None	+907	Unincorporated Areas of Douglas County.
	Approximately 750 feet upstream of North Sweetwater Road.	None	+966	
Sweetwater Creek Tributary L.3.	At the Sweetwater Creek Tributary L confluence	None	+934	Unincorporated Areas of Douglas County.
	Approximately 1,500 feet upstream of Union Grove Road.	None	+990	
Sweetwater Creek Tributary L.3.1.	At the Sweetwater Creek Tributary L.3 confluence	None	+955	Unincorporated Areas of Douglas County.
	Approximately 1,600 feet upstream of the Sweetwater Creek Tributary L.3 confluence.	None	+999	
Tyree Branch	At the Hurricane Creek confluence	None	+1044	Unincorporated Areas of Douglas County.
	Approximately 1.10 miles upstream of the Hurricane Creek confluence.	None	+1171	
Zion Branch	At the Hurricane Creek confluence	None	+736	Unincorporated Areas of Douglas County.
	Approximately 0.53 mile upstream of State Route 5	None	+988	

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Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
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ADDRESSES

City of Austell

Maps are available for inspection at the City of Austell-Threadmill Complex, 5000 Austell-Powder Springs Road, Austell, GA 30106.

City of Douglasville

Maps are available for inspection at City Hall, 6695 Church Street, Douglasville, GA 30134.

Unincorporated Areas of Douglas County

Maps are available for inspection at the Douglas County Courthouse, 8700 Hospital Drive, Douglasville, GA 30134.

Forsyth County, Georgia, and Incorporated Areas

Baldridge Creek	At Pilgrim Mill Road	None	+1088	Unincorporated Areas of Forsyth County.
	Approximately 0.75 mile upstream of U.S. Route 19 (State Route 400).	None	+1299	
Bentley Creek	Approximately 1,460 feet upstream of the Big Creek confluence.	+1024	+1025	Unincorporated Areas of Forsyth County.
	Approximately 1,800 feet upstream of Bentley Road	None	+1047	
Big Creek	At the Fulton County boundary	+999	+1000	City of Cumming, Unincorporated Areas of Forsyth County.
	Approximately 1,490 feet upstream of Canton Road (State Route 20).	None	+1142	
Camp Creek Tributary	At the Fulton County boundary	+1010	+1012	Unincorporated Areas of Forsyth County.
	Approximately 350 feet upstream of James Road	None	+1062	
Chattahoochee River	At the Fulton County boundary	+908	+904	Unincorporated Areas of Forsyth County.
	At the Buford Dam	+921	+920	
Cheatam Creek	At the Big Creek confluence	+1027	+1029	Unincorporated Areas of Forsyth County.
	Approximately 1,250 feet upstream of Kelly Mill Road	None	+1056	
Daves Creek	At the James Creek confluence	+948	+946	Unincorporated Areas of Forsyth County.
	Approximately 1,070 feet upstream of Northside Forsyth Drive.	None	+1203	
Dick Creek	At the Chattahoochee River confluence	+909	+906	Unincorporated Areas of Forsyth County.
	At Mathis Airport Parkway	+1048	+1042	
Haw Creek	At the Chattahoochee River confluence	+922	+919	Unincorporated Areas of Forsyth County.
	Approximately 400 feet upstream of Habersham Gate Drive.	None	+1179	
James Creek	At the Chattahoochee River confluence	+916	+912	Unincorporated Areas of Forsyth County.
	Approximately 700 feet upstream of Oak Industrial Lane.	None	+1204	
Johns Creek	At the upstream side of McGinnis Ferry Road	None	+1023	Unincorporated Areas of Forsyth County.
	At the Fulton County boundary	None	+1041	
Sawnee Creek	At the downstream side of the Sawnee Creek Tributary 2 confluence.	None	+1085	Unincorporated Areas of Forsyth County.
	Approximately 1,050 feet upstream of Jackson Court	None	+1261	

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ADDRESSES

City of Cumming

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Maps are available for inspection at City Hall, 100 Main Street, Cumming, GA 30040.				
Unincorporated Areas of Forsyth County				
Maps are available for inspection at the Forsyth County Administration Building, Department of Engineering, 110 East Main Street, Suite 120, Cumming, GA 30040.				
Gwinnett County, Georgia, and Incorporated Areas				
Brushy Creek	At the Chattahoochee River confluence	+906	+904	City of Suwanee, Unincorporated Areas of Gwinnett County.
	Approximately 100 feet upstream of Suwanee Dam Road.	+1014	+1010	
Chattahoochee River	Approximately 800 feet upstream of Holcomb Bridge Road (at the Fulton County boundary).	+885	+884	City of Berkeley Lake, City of Duluth, City of Sugar Hill, City of Suwanee, Unincorporated Areas of Gwinnett County.
	Approximately 0.6 mile upstream of the Chattahoochee River (Bowmans East) divergence.	+921	+920	
Chattahoochee River (Bowmans East).	At the Chattahoochee River confluence	None	+915	City of Sugar Hill, Unincorporated Areas of Gwinnett County.
	Approximately 0.71 mile upstream of the Chattahoochee River confluence.	None	+917	
Duncan Creek	Approximately 1.14 miles downstream of Crimson King Drive.	+816	+817	Town of Braselton, Unincorporated Areas of Gwinnett County.
	Approximately 0.43 mile upstream of East Rock Quarry Road.	+1080	+1082	
Level Creek	At the Chattahoochee River confluence	+911	+907	City of Sugar Hill, City of Suwanee, Unincorporated Areas of Gwinnett County.
	Approximately 250 feet upstream of Peachtree Industrial Boulevard.	+1048	+1045	
Level Creek Tributary No. 1	At the Level Creek confluence	+955	+951	City of Suwanee, Unincorporated Areas of Gwinnett County.
	At the downstream side of Suwanee Dam Road	+1003	+995	
Level Creek Tributary No. 2	At the upstream side of Whitehead Road	+975	+976	City of Sugar Hill, Unincorporated Areas of Gwinnett County.
	Approximately 160 feet upstream of Sugar Ridge Drive.	+1022	+1021	
Little Mulberry River	Approximately 0.47 mile downstream of Mount Moriah Road.	+837	+836	Unincorporated Areas of Gwinnett County.
	Approximately 550 feet upstream of Millwater Crossing.	+988	+995	
Little Mulberry River Tributary A.	At the Little Mulberry River confluence	+844	+846	Unincorporated Areas of Gwinnett County.
	Approximately 175 feet upstream of Mineral Springs Road.	+987	+986	
Little Mulberry River Tributary B.	At the Little Mulberry River confluence	+847	+849	Unincorporated Areas of Gwinnett County.
	Approximately 125 feet upstream of Hog Mountain Road.	+931	+929	
Little Mulberry River Tributary C.	At the Little Mulberry River confluence	+857	+858	Unincorporated Areas of Gwinnett County.
	Approximately 125 feet upstream of the private driveway.	+885	+889	
Little Mulberry River Tributary D.	At the upstream side of Hog Mountain Road	+898	+896	Unincorporated Areas of Gwinnett County.
	Approximately 270 feet upstream of Hog Mountain Road.	+898	+896	
Little Mulberry River Tributary E.	Approximately 100 feet upstream of Hog Mountain Road.	+907	+908	Unincorporated Areas of Gwinnett County.

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	Approximately 100 feet downstream of Patrick Road ..	+907	+908	
Mill Creek (Stream 6)	Approximately 950 feet upstream of the Mill Creek Tributary (Stream 6.1) confluence.	+895	+896	City of Berkeley Lake, Unincorporated Areas of Gwinnett County.
	At the upstream side of Bush Road	None	+926	
Mill Creek Tributary (Stream 6.1).	At the Mill Creek (Stream 6) confluence	+898	+895	City of Berkeley Lake, Unincorporated Areas of Gwinnett County.
	Approximately 270 feet upstream of Bayway Circle	+975	+976	
Mitchell Creek	Approximately 1.34 miles downstream of Thompson Mill Road.	+1014	+1015	Unincorporated Areas of Gwinnett County.
	Approximately 850 feet upstream of South Puckett Lane.	+1131	+1136	
Richland Creek	At the Chattahoochee River confluence	+917	+914	City of Buford, City of Sugar Hill, Unincorporated Areas of Gwinnett County.
	Approximately 80 feet upstream of Cole Road Northeast.	+1095	+1096	
Richland Creek Tributary No. 1.	At the Richland Creek confluence	+952	+951	City of Sugar Hill, Unincorporated Areas of Gwinnett County.
	Approximately 100 feet upstream of Stewart Road Northeast.	None	+1010	
Richland Creek Tributary No. 2.	At the Richland Creek confluence	+1008	+1010	City of Buford, Unincorporated Areas of Gwinnett County.
	Approximately 450 feet upstream of Pine Hollow Way	None	+1055	
Rock Creek	Approximately 950 feet downstream of Bailey Road ...	+960	+961	Unincorporated Areas of Gwinnett County.
	Approximately 1.68 miles upstream of Bailey Road	+1000	+999	
Rogers Creek	Approximately 1,160 feet upstream of the Chattahoochee River confluence.	+900	+899	City of Duluth, Unincorporated Areas of Gwinnett County.
	Approximately 0.83 mile upstream of Bridlewood Drive.	+1035	+1039	
Sherwood Creek	Approximately 0.66 mile downstream of Old Thompson Mill Road.	+921	+922	Unincorporated Areas of Gwinnett County.
	Approximately 1,950 feet upstream of Rock Quarry Road.	+963	+964	
Stream 1	At the Chattahoochee River confluence	+886	+887	Unincorporated Areas of Gwinnett County.
	Approximately 450 feet upstream of Allenhurst Drive	+931	+932	
Stream 10	At the Chattahoochee River confluence	+903	+902	City of Duluth, Unincorporated Areas of Gwinnett County.
	Approximately 0.47 mile upstream of Buford Highway	+1025	+1031	
Stream 2	At the Chattahoochee River confluence	+887	+888	Unincorporated Areas of Gwinnett County.
	Approximately 1,650 feet upstream of the pedestrian bridge.	+949	+947	
Stream 3	At the Chattahoochee River confluence	+889	+890	Unincorporated Areas of Gwinnett County.
	Approximately 0.55 mile upstream of Edgerton Drive	+942	+948	
Stream 4	Approximately 950 feet upstream of the Chattahoochee River confluence.	+892	+891	Unincorporated Areas of Gwinnett County.
	Approximately 100 feet upstream of the Detention Pond.	+957	+950	
Stream 5	Approximately 1,150 feet upstream of the Chattahoochee River confluence.	+894	+895	Unincorporated Areas of Gwinnett County.
	Approximately 275 feet upstream of Bush Road	+918	+920	
Stream 8	At the Chattahoochee River confluence	+897	+898	City of Duluth.
	At the upstream side of Howell Springs Drive	+970	+972	
Suwanee Creek	At the Chattahoochee River confluence	+905	+903	Unincorporated Areas of Gwinnett County.
	Approximately 0.91 mile upstream of the Chattahoochee River confluence.	+910	+909	

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Swilling Creek	At the Chattahoochee River confluence	+896	+897	City of Duluth.
	Approximately 1,680 feet upstream of Tree Summit Parkway.	+975	+977	
Swilling Creek Tributary	At the Swilling Creek confluence	+924	+928	City of Duluth.
	Approximately 100 feet downstream of Whippoorwill Drive.	+968	+966	
Wheeler Creek	Approximately 1.2 miles downstream of Wheeler Road.	+837	+838	Unincorporated Areas of Gwinnett County.
	Approximately 435 feet upstream of Flowery Branch Road.	+930	+931	

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ADDRESSES

City of Berkeley Lake
Maps are available for inspection at City Hall, 4040 Berkeley Lake Road, Berkeley Lake, GA 30096.

City of Buford
Maps are available for inspection at City Hall, 95 Scott Street, Buford, GA 30518.

City of Duluth
Maps are available for inspection at the Department of Planning and Development, 3578 West Lawrenceville Street, Duluth, GA 30096.

City of Sugar Hill
Maps are available for inspection at City Hall, Planning and Zoning Department, 4988 West Broad Street, Sugar Hill, GA 30518.

City of Suwanee
Maps are available for inspection at the Crossroads Center, 323 Buford Highway, Suwanee, GA 30024.

Town of Braselton
Maps are available for inspection at the Town Hall, 4982 State Route 53, Braselton, GA 30517.

Unincorporated Areas of Gwinnett County
Maps are available for inspection at the Gwinnett County Office, 75 Langley Drive, Lawrenceville, GA 30045.

Caddo Parish, Louisiana, and Incorporated Areas

Backwater effects from 81st Street Drainage Ditch.	At the intersection of Linwood Avenue and West 67th Street.	None	+203	City of Shreveport.
	Approximately 130 feet east of the intersection of Wallace Avenue and West 67th Street.	None	+203	
Backwater effects from Airport Ditch.	Approximately 40 feet north of the intersection of Valley View Drive and Trammel Drive.	None	+185	City of Shreveport.
	Approximately 820 feet north of the intersection of Valley View Drive and Trammel Drive.	None	+185	
Backwater effects from Airport Ditch.	Approximately 240 feet southeast of the intersection of Dollarway Drive and Amie Street.	None	+192	City of Shreveport.
	At the intersection of Dollarway Drive and Jewella Avenue.	None	+192	
Backwater effects from Airport Ditch.	Approximately 425 feet southeast of the intersection of Dollarway Drive and Karen Street.	None	+192	City of Shreveport.
	Approximately 160 feet east of the intersection of Dollarway Drive and Karen Street.	None	+192	
Backwater effects from Airport Ditch.	Approximately 750 feet south of the intersection of West 70th Street and the railroad.	None	+198	City of Shreveport.
	Approximately 170 feet south of the intersection of West 70th Street and the railroad.	None	+198	
Backwater effects from Airport Ditch.	Approximately 500 feet southeast of the intersection of Kennedy Drive and West 70th Street.	None	+204	City of Shreveport.
	Approximately 130 feet southwest of the intersection of West 70th Street and the railroad.	None	+204	
Backwater effects from Airport Ditch.	Approximately 290 feet northwest of the intersection of Kennedy Drive and West 70th Street.	None	+206	City of Shreveport.

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	Approximately 1,050 feet northwest of the intersection of Kennedy Drive and West 70th Street.	None	+206	
Backwater effects from Audrey Lane Lateral.	Approximately 330 feet north of the intersection of Audrey Lane and Willis Street.	None	+187	City of Shreveport.
	Approximately 710 feet northeast of the intersection of Hazel Street and Willis Street.	None	+187	
Backwater effects from Bayou Pierre.	Approximately 114 feet south of the intersection of Huron Street and Gilbert Drive.	None	+166	City of Shreveport.
	Approximately 543 feet southwest of the intersection of Huron Street and Gilbert Drive.	None	+166	
Backwater effects from Boggy Bayou.	Approximately 770 feet southwest of the intersection of Harper Road and Colquitt Road.	None	+172	Unincorporated Areas of Caddo Parish.
	Approximately 1,240 feet west of the intersection of Harper Road and Colquitt Road.	None	+172	
Backwater effects from Brush Bayou.	Approximately 1,520 feet northwest of the intersection of Linwood Avenue and Bert Kouns Industrial Loop.	None	+170	City of Shreveport.
	Approximately 1,700 feet southwest of the intersection of Linwood Avenue and Kennie Road.	None	+170	
Backwater effects from Brush Bayou.	Approximately 660 feet southwest of the intersection of Wilshire Drive and Pine Tree Drive.	None	+184	City of Shreveport.
	Approximately 650 feet northeast of the intersection of Trammel Drive and Valley View Drive.	None	+184	
Backwater effects from Cargill Lateral.	Approximately 50 feet west of the intersection of Chateau Drive and Legion Circle.	None	+196	City of Shreveport.
	Approximately 420 feet southwest of the intersection of Chateau Drive and Classic Circle.	None	+196	
Backwater effects from Choctaw Bayou.	Approximately 0.65 mile west of the intersection of Tolmak Road and Industry Road.	None	+180	Unincorporated Areas of Caddo Parish.
	Approximately 0.59 mile northwest of the intersection of Tolmak Road and Industry Road.	None	+180	
Backwater effects from Cross Bayou Tributary 3.	Approximately 0.39 mile northeast of the intersection of Greenwood Heights Street and U.S. Route 80.	None	+231	Town of Greenwood.
	Approximately 0.48 mile northeast of the intersection of Greenwood Heights Street and U.S. Route 80.	None	+231	
Backwater effects from Industrial Park Lateral.	Approximately 530 feet southwest of the intersection of Sandalwood Drive and Green Forest Road.	None	+176	City of Shreveport.
	Approximately 530 feet west of the intersection of Sandalwood Drive and Green Forest Road.	None	+176	
Backwater effects from Industrial Park Lateral.	Approximately 570 feet southeast of the intersection of Castlebrook Circle and Castlebrook Drive.	None	+178	City of Shreveport.
	Approximately 740 feet northwest of the intersection of Castlebrook Circle and Castlebrook Drive.	None	+178	
Backwater effects from Industrial Park Lateral.	Approximately 110 feet southwest of the intersection of Lytham Drive and Tyne Drive.	None	+179	City of Shreveport.
	Approximately 250 feet southeast of the intersection of Newcastle Boulevard and Lytham Drive.	None	+179	
Backwater effects from Industrial Park Lateral.	Approximately 1,400 feet southeast of the intersection of Pines Road and Bert Kouns Industrial Loop.	None	+185	Unincorporated Areas of Caddo Parish.
	Approximately 800 feet southwest of the intersection of Pines Road and Bert Kouns Industrial Loop.	None	+185	
Backwater effects from Lincoln Memorial Lateral.	Approximately 1,190 feet northwest of the intersection of McGoldrick Drive and Bert Kouns Industrial Loop.	None	+203	City of Shreveport.
	Approximately 0.63 mile northwest of the intersection of McGoldrick Drive and Bert Kouns Industrial Loop.	None	+203	
Backwater effects from Lincoln Memorial Lateral.	Approximately 1,300 feet west of the intersection of Buncombe Road and the railroad.	None	+209	City of Shreveport, Unincorporated Areas of Caddo Parish.
	Approximately 1,570 feet northwest of the intersection of Buncombe Road and the railroad.	None	+209	
Backwater effects from McCain Creek.	Approximately 1,600 feet southeast of the intersection of North Forty Drive and North Market Street.	None	+190	Unincorporated Areas of Caddo Parish.
	Approximately 270 feet southwest of the intersection of Eakin Road and Old Mooringsport Road.	None	+190	
Backwater effects from McCain Creek.	Approximately 1,600 feet southeast of the intersection of North Market Street and State Route 538 (Old Mooringsport Road).	None	+192	Unincorporated Areas of Caddo Parish.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 1,020 feet southeast of the intersection of North Market Street and State Route 538 (Old Mooringsport Road).	None	+192	
Backwater effects from McCain Creek.	Approximately 450 feet east of the intersection of Alaska Lane and Canada Court.	None	+195	Unincorporated Areas of Caddo Parish.
	Approximately 190 feet east of the intersection of Alaska Lane and Vancouver Drive.	None	+195	
Backwater effects from McCain Creek.	Approximately 1,630 feet southwest of Roy Road	None	+202	Unincorporated Areas of Caddo Parish.
	Approximately 0.56 mile southwest of Roy Road	None	+202	
Backwater effects from McCain Creek.	Approximately 1.1 miles southeast of the intersection of Luke Lane and Tom Ridge Road.	None	+211	Unincorporated Areas of Caddo Parish.
	Approximately 0.79 mile northeast of the intersection of Luke Lane and Tom Ridge Road.	None	+211	
Backwater effects from Red River.	Approximately 650 feet southeast of the intersection of South Pointe Parkway and Dee Street.	None	+163	City of Shreveport.
	Approximately 1,050 feet northeast of the intersection of South Pointe Parkway and Dee Street.	None	+163	
Backwater effects from Shirley Francis Lateral.	Approximately 440 feet southwest of the Industrial Park Lateral confluence.	None	+206	City of Shreveport.
	Approximately 870 feet southwest of the Industrial Park Lateral confluence.	None	+206	
Backwater effects from South Broadmoor Lateral.	Approximately 100 feet south of the intersection of Martha Ann Drive and Pugh Avenue.	None	+159	City of Shreveport.
	Approximately 50 feet south of the intersection of Schaub Drive and Pugh Avenue.	None	+159	
Backwater effects from South Broadmoor Lateral.	Approximately 239 feet east of the intersection of Jackson Square Place and Fountainbleau Drive.	None	+159	City of Shreveport.
	Approximately 786 feet east of the intersection of Jackson Square Place and Fountainbleau Drive.	None	+159	
Brookwood Ditch	At the downstream side of the railroad	+189	+188	City of Shreveport.
	Approximately 100 feet downstream of Hawthorne Drive.	+191	+190	
Caddo Lake	Approximately 0.57 mile northwest of the intersection of Caddo Lake Road and Haphazard Road.	None	+181	Unincorporated Areas of Caddo Parish
Cargill Lateral	Approximately 250 feet downstream of Valley View Drive.	+195	+196	City of Shreveport.
	Approximately 50 feet upstream of the railroad	+203	+207	
Cross Bayou Lateral	At the downstream side of Weinstock Street	+192	+194	City of Shreveport.
	Approximately 80 feet upstream of Weinstock Street ..	+194	+196	
Cross Lake	Approximately 1,200 feet southeast of the intersection of North Lakeshore Drive and Lakeview Road.	None	+177	Unincorporated Areas of Caddo Parish.
Ponding area (flooding effects from Cross Bayou).	Entire ponding area approximately 730 feet west of the intersection of Shreveport Blanchard Highway and North Hearne Avenue.	None	+166	City of Shreveport.
Ponding area (flooding effects from Cross Bayou).	Entire ponding area approximately 1,030 feet northwest of the intersection of Shreveport Blanchard Highway and North Hearne Avenue.	None	+166	City of Shreveport.
Ponding area (flooding effects from Gilmer Bayou).	Entire ponding area approximately 1,760 feet north of the intersection of Grantham Street and Chambers Street.	None	+195	City of Shreveport.
Ponding area (flooding effects from Hollywood Ditch).	Entire ponding area approximately 600 feet southeast of the intersection of Evers Drive and Broadway Avenue.	None	+205	City of Shreveport.
Ponding area (flooding effects from Red River).	Entire ponding area approximately 510 feet east of the intersection of East Kings Highway and Captain H. M. Shreve Boulevard.	None	+161	City of Shreveport.
Ponding area (flooding effects from Red River).	Entire ponding area approximately 555 feet north of the intersection of East Kings Highway and Captain H. M. Shreve Boulevard.	None	+161	City of Shreveport.
Ponding area (flooding effects from Red River).	Entire ponding area approximately 1,500 feet southeast of the intersection of I–20 and Spring Street.	None	+165	City of Shreveport.
Ponding area (flooding effects from Red River).	Entire ponding area approximately 900 feet southeast of the intersection of Monty Avenue and Taft Street.	None	+166	City of Shreveport.
Ponding area (flooding effects from Wallace Lake).	Entire ponding area approximately 0.49 mile south of the intersection of Ellerbe Road and Robson Road.	None	+160	Unincorporated Areas of Caddo Parish.

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Shallow flooding	Approximately 165 feet south of the intersection of Chelsea Drive and Grover Place.	None	+162	City of Shreveport.
	Approximately 145 feet south of the intersection of Sand Beach Boulevard and Grover Place.	None	+162	
Shallow flooding	Approximately 195 feet east of the intersection of Roma Drive and Sand Beach Boulevard.	None	+162	City of Shreveport.
	Approximately 705 feet east of the intersection of Roma Drive and Sand Beach Boulevard.	None	+162	
Shallow flooding	Approximately 490 feet southeast of the intersection of Orchid Street and Pennsylvania Avenue.	None	+162	City of Shreveport.
Shallow flooding	Approximately 350 feet southeast of the intersection of Tibbs Avenue and Pennsylvania Avenue.	None	+162	City of Shreveport.
Shallow flooding	An area bounded by Bruce Avenue to the north, Anniston Avenue to the east, Norwood Street to the south, and Roma Drive to the west.	None	+162	City of Shreveport.
Shallow flooding	An area bounded by Leo Avenue to the north, Steere Drive to the east, Carrollton Avenue to the south, and Akard Avenue to the west.	None	+162	City of Shreveport.
Shallow flooding	Approximately 110 feet east of the intersection of Youree Drive and Preston Avenue.	None	+162	City of Shreveport.
	Approximately 620 feet northeast of the intersection of Youree Drive and Preston Avenue.	None	+162	
Shallow flooding	Approximately 360 feet east of the intersection of Akard Avenue and Ockley Drive.	None	+162	City of Shreveport.
	Approximately 1,220 feet east of the intersection of Akard Avenue and Ockley Drive.	None	+162	
Shallow flooding	An area bounded by Carrollton Avenue to the north, Steere Drive to the east, Pennsylvania Avenue to the south, and Akard Avenue to the west.	None	+162	City of Shreveport.
Shallow flooding	Approximately 440 feet north of the intersection of Kathy Lane and Kathy Circle.	None	+162	City of Shreveport.
Shallow flooding	Approximately 340 feet southwest of the intersection of Ockley Drive and Akard Avenue.	None	+162	City of Shreveport.
Shallow flooding	From approximately 90 feet northwest of the railroad to approximately 250 feet southeast of the intersection of Hawthorne Drive and Torento Lane.	#1	+189	City of Shreveport.
Shallow flooding	An area bounded by East 68th Street to the north, Line Avenue to the east, East 74th Street to the south, and Southern Avenue to the west.	None	+208	City of Shreveport.
Unnamed flooding source (flooding effects from Bayou Pierre).	Approximately 0.61 mile north of the intersection of Explorer Road and Robson Road.	None	+153	Unincorporated Areas of Caddo Parish.
	Approximately 0.80 mile northwest of the intersection of Jeter Road and Robson Road.	None	+153	
Unnamed flooding source (flooding effects from Bayou Pierre).	Approximately 0.39 mile southeast of the intersection of Rose Ridge Circle and Leonard Road.	None	+153	Unincorporated Areas of Caddo Parish.
	Approximately 0.81 mile southeast of the intersection of Westchester Circle and Nottingham Drive.	None	+153	
Unnamed flooding source (flooding effects from Bayou Pierre).	Approximately 0.76 mile north of the intersection of Explorer Road and Robson Road.	None	+153	Unincorporated Areas of Caddo Parish.
	Approximately 1.20 miles northeast of the intersection of Bent Tree Drive and Ellerbe Road.	None	+153	
Unnamed flooding source (flooding effects from Bayou Pierre).	Approximately 1,690 feet northwest of the intersection of Red Haw Lane and Leonard Road.	None	+154	Unincorporated Areas of Caddo Parish.
	Approximately 0.46 mile northeast of the intersection of Ellerbe Road and Bob White Lane.	None	+155	
Unnamed flooding source (flooding effects from Red River).	Approximately 295 feet southwest of the intersection of North Common Street and Airport Drive.	None	+167	City of Shreveport.
	Approximately 730 feet northeast of the intersection of Ute Terrace and Grimmett Drive.	None	+171	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.

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		Effective	Modified	

Depth in feet above ground.
∧ Mean Sea Level, rounded to the nearest 0.1 meter.
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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Shreveport

Maps are available for inspection at the Office of the City Engineer, 505 Travis Street, Suite 300, Shreveport, LA 71101.

Town of Greenwood

Maps are available for inspection at City Hall, 9381 Greenwood Road, Greenwood, LA 71033.

Unincorporated Areas of Caddo Parish

Maps are available for inspection at the Caddo Parish Department of Public Works, 505 Travis Street, Suite 820, Shreveport, LA 71101.

Mower County, Minnesota, and Incorporated Areas

Cedar River	Approximately 1.21 miles upstream of 29th Avenue Southwest (County Highway 28).	+1188	+1190	City of Austin.
	At the downstream side of I and M Rail Link	+1204	+1205	
Dobbins Creek/North Branch Dobbins Creek.	Approximately 0.76 mile upstream of 21st Street Northeast.	+1206	+1205	Unincorporated Areas of Mower County.
	Approximately 0.86 mile upstream of 21st Street Northeast.	+1206	+1205	

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+ North American Vertical Datum.
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ADDRESSES

City of Austin

Maps are available for inspection at City Hall, 500 4th Avenue Northeast, Austin, MN 55912.

Unincorporated Areas of Mower County

Maps are available for inspection at the Mower County Government Center, 201 1st Street Northeast, Austin, MN 55912.

Lake County, Montana, and Incorporated Areas

Dayton Creek	Approximately 1,100 feet downstream of U.S. Route 93.	None	+2897	Unincorporated Areas of Lake County.
	Approximately 1,930 feet upstream of Big Meadows Road.	None	+3196	
Johnson Creek	At the upstream side of Private Drive	None	+3078	Unincorporated Areas of Lake County.
	Approximately 1.25 miles upstream of Private Drive	None	+4010	
Johnson Creek Overflow (Kelley Drive).	Approximately 840 feet downstream of Sunburst Drive	None	+3082	Unincorporated Areas of Lake County.
	Approximately 1,880 feet upstream of Sunburst Drive	None	+3116	
Lower Mission Creek	At the Post Creek confluence	None	+2658	Unincorporated Areas of Lake County.
	Approximately 1.67 miles upstream of Old Freight Road.	None	+2815	
Post Creek	Approximately 1.87 miles downstream of Old Freight Road.	None	+2658	Unincorporated Areas of Lake County.
	Approximately 670 feet upstream of Fish Hatchery Road.	None	+2735	
Swan Lake	Entire shoreline	None	+3078	Unincorporated Areas of Lake County.
Upper Mission Creek	Approximately 90 feet upstream of U.S. Route 20	None	+2883	Town of St. Ignatius, Unincorporated Areas of Lake County.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	Approximately 0.74 mile upstream of Foothills Road ..	None	+3311	

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ADDRESSES

Town of St. Ignatius

Maps are available for inspection at 12 1st Avenue, St. Ignatius, MT 59865.

Unincorporated Areas of Lake County

Maps are available for inspection at 106 4th Avenue East, Polson, MT 59860.

Cleveland County, Oklahoma, and Incorporated Areas

Dave Blue Creek	At the downstream side of North Main Street	+1117	+1118	City of Noble, City of Norman.
	Approximately 0.4 mile upstream of Post Oak Road ...	None	+1177	
Little River	Approximately 600 feet downstream of 12th Avenue Northeast.	None	+1097	City of Moore, City of Norman.
	Approximately 1.0 mile downstream of Southwest 34th Street.	None	+1159	
Stream E (backwater effects from Little River).	At the Little River confluence	None	+1159	City of Moore, City of Norman.
	Approximately 1,480 feet upstream of the Little River confluence.	None	+1159	
Stream E	Approximately 0.42 mile downstream of Southwest 19th Street.	None	+1191	City of Moore.
	Approximately 60 feet downstream of Southwest 4th Street.	None	+1226	
Tributary 1 to Unnamed Tributary to Cow Creek Tributary 2 North Branch (backwater effects from Unnamed Tributary to Cow Creek Tributary 2 North Branch).	At the Unnamed Tributary to Cow Creek Tributary 2 North Branch confluence.	None	+1236	City of Oklahoma City.
	Approximately 660 feet upstream of the Unnamed Tributary to Cow Creek Tributary 2 North Branch confluence.	None	+1236	
Tributary 3 of Canadian River Tributary 1.	Approximately 800 feet downstream of Southwest 119th Street.	+1197	+1198	City of Oklahoma City.
	Approximately 250 feet downstream of Southwest 106th Street.	None	+1239	
Tributary A to Tributary 3 of Canadian River Tributary 1 (backwater effects from Tributary 3 of Canadian River Tributary 1).	At the Tributary 3 of Canadian River Tributary 1 confluence.	None	+1233	City of Oklahoma City.
	Approximately 1,080 feet upstream of the Tributary 3 of Canadian River Tributary 1 confluence.	None	+1233	
Tributary B to Tributary 3 of Canadian River Tributary 1 (backwater effects from Tributary 3 of Canadian River Tributary 1).	At the Tributary 3 of Canadian River Tributary 1 confluence.	None	+1211	City of Oklahoma City.
	Approximately 1,100 feet upstream of the Tributary 3 of Canadian River Tributary 1 confluence.	None	+1211	
Unnamed Tributary to Cow Creek Tributary 2 North Branch.	Approximately 240 feet upstream of the Cow Creek Tributary 2 North Branch confluence.	None	+1224	City of Oklahoma City.
	Approximately 0.8 mile upstream of the Cow Creek Tributary 2 North Branch confluence.	None	+1240	
Unnamed Tributary to Little River.	At the Little River confluence	None	+1150	City of Moore, City of Norman.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
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	Approximately 300 feet upstream of Southwest 34th Street.	None	+1185	

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Send comments to Luis Rodriguez, Chief, Engineering Management Branch, Federal Insurance and Mitigation Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472.

ADDRESSES

City of Moore
Maps are available for inspection at City Hall, 301 North Broadway, Moore, OK 73160.

City of Noble
Maps are available for inspection at City Hall, 304 South Main Street, Noble, OK 73068.

City of Norman
Maps are available for inspection at City Hall, 201 West Gray Street, Building A, Norman, OK 73069.

City of Oklahoma City
Maps are available for inspection at City Hall, 420 West Main Street, Suite 100, Oklahoma City, OK 73102.

Sullivan County, Pennsylvania (All Jurisdictions)

Big Run	At the Muncy Creek confluence	+968	+965	Township of Davidson.
	Approximately 1,660 feet upstream of Fairman Road	None	+1153	
Little Loyalsock Creek	Approximately 1,150 feet downstream of the Marsh Run confluence.	None	+1432	Borough of Dushore.
	Approximately 540 feet upstream of Main Street	None	+1458	
Loyalsock Creek	Approximately 2.6 miles downstream of the Ogdonia Creek confluence.	+789	+780	Borough of Forksville, Township of Hillsgrove.
	At the Little Loyalsock Creek confluence	None	+1004	
Muncy Creek	At the Muncy Creek Tributary 1 confluence	+787	+783	Township of Davidson, Township of Shrewsbury.
	Approximately 0.76 mile upstream of Pecks Road	+991	+988	

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ADDRESSES

Borough of Dushore
Maps are available for inspection at the Municipal Building, 216 Julia Street, Dushore, PA 18614.

Borough of Forksville
Maps are available for inspection at the Sullivan County Planning and Community Development, 245 Muncy Street, Suite 110, Laporte, PA 18626.

Township of Davidson
Maps are available for inspection at the Davidson Township Municipal Building, 20 Michelle Road, Muncy Valley, PA 17758.

Township of Hillsgrove
Maps are available for inspection at the Sullivan County Planning and Community Development, 245 Muncy Street, Suite 110, Laporte, PA 18626.

Township of Shrewsbury
Maps are available for inspection at the at Shrewsbury Township Municipal Building, 1793 Edkin Hill Road, Muncy Valley, PA 17758.

Yakima County, Washington, and Incorporated Areas

Ahtanum Creek	Approximately 0.33 mile downstream of Burlington Northern Railroad.	+952	+951	City of Union Gap, Unincorporated Areas of Yakima County.

Flooding source(s)	Location of referenced elevation**	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground ∧Elevation in meters (MSL)		Communities affected
		Effective	Modified	
	At the South Fork Ahtanum Creek confluence	+2060	+2059	
Ahtanum Creek Bypass	Approximately 0.53 mile southwest of the intersection of Meadowbrook Road and South 90th Avenue.	+1298	+1299	Unincorporated Areas of Yakima County.
	Approximately 0.74 mile upstream of South American Fruit Road.	+1480	+1479	
Ahtanum Creek Left Overbank Bypass.	At the Ahtanum Creek confluence	None	+1259	Unincorporated Areas of Yakima County.
	Approximately 0.47 mile southwest of the intersection of Meadowbrook Road and South 90th Avenue.	None	+1296	
Bachelor Creek	Approximately 0.61 mile downstream of South 5th Avenue.	+997	+999	City of Union Gap, City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 0.43 mile upstream of Unnamed Road	+1744	+1746	
Bachelor Creek Right Overbank Bypass.	Approximately 0.50 mile downstream of South Stanton Lane.	None	+1365	Unincorporated Areas of Yakima County.
	Approximately 1,510 feet upstream of South Stanton Road.	None	+1406	
Bachelor Creek-Emma Lane Overflow.	Approximately 0.43 mile downstream of South 34th Avenue.	None	+1076	Unincorporated Areas of Yakima County.
	Approximately 661 feet upstream of South 37th Avenue.	None	+1104	
Bachelor Creek-Hatton Creek Overflow.	Approximately 0.48 mile downstream of Lynch Lane ..	None	+1588	Unincorporated Areas of Yakima County.
	Approximately 1,478 feet upstream of Lynch Lane	None	+1639	
Emma Lane Overflow	Approximately 0.62 mile downstream of South 14th Avenue.	None	+1012	City of Union Gap, City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 175 feet upstream of Emma Lane	None	+1116	
Hatton Creek	Approximately 411 feet downstream of South 62nd Avenue.	+1176	+1177	Unincorporated Areas of Yakima County.
	Approximately 1.06 miles upstream of Lynch Lane	+1676	+1677	
Hatton Creek Meadowbrook Road Overflow.	Approximately 1,294 feet downstream of Southcreek Drive.	None	+1206	Unincorporated Areas of Yakima County.
	Approximately 1,347 feet upstream of South Wiley Road.	None	+1350	
Hatton Creek Right Overbank Bypass.	Approximately 431 feet downstream of Rutherford Road.	None	+1517	Unincorporated Areas of Yakima County.
	Approximately 0.44 mile upstream of Rutherford Road	None	+1548	
North Fork Ahtanum Creek ...	Approximately 0.71 mile downstream of South Fork Ahtanum Creek.	+2065	+2063	Unincorporated Areas of Yakima County.
	Approximately 0.51 mile upstream of North Fork Ahtanum Road.	None	+3062	
North Fork Ahtanum Creek Irrigation Diversion.	Approximately 0.39 mile northwest of the intersection of South Fork Ahtanum Road and Ahtanum Road.	None	+2161	Unincorporated Areas of Yakima County.
	Approximately 0.55 mile northeast of the intersection of Aspen Springs Lane and Dusty Lane.	None	+2201	
North Fork Ahtanum Creek Left Bank Overflow.	Approximately 627 feet downstream of Unnamed Road.	None	+2121	Unincorporated Areas of Yakima County.
	Approximately 350 feet upstream of North Fork Ahtanum Road.	None	+2251	
South Fork Ahtanum Creek ..	At the Ahtanum Creek confluence	None	+2059	Unincorporated Areas of Yakima County.
	Approximately 0.90 mile downstream of Unnamed Road.	None	+2552	
Spring Creek	Approximately 0.58 mile downstream of Yakima Air Terminal.	+1043	+1042	City of Yakima.
	Approximately 0.71 mile upstream of Yakima Air Terminal.	+1082	+1081	
Spring Creek Tributary 1	Approximately 843 feet downstream of South 36th Avenue.	+1082	+1081	City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 749 feet upstream of South Stanton Road.	+1430	+1432	
Spring Creek Tributary 1 Right Overbank Bypass.	Approximately 940 feet downstream of South 90th Avenue.	None	+1256	Unincorporated Areas of Yakima County.

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	Approximately 1,505 feet upstream of South 90th Avenue.	None	+1275	
Spring Creek Tributary 1–Tributary 2 Overflow Split 1.	At the downstream side of South 64th Avenue	None	+1173	City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 213 feet upstream of Occidental Road	None	+1178	
Spring Creek Tributary 1–Tributary 2 Overflow Split 2.	Approximately 1,186 feet downstream of South 40th Avenue.	None	+1090	City of Yakima, Unincorporated Areas of Yakima County.
	Approximately 0.39 mile upstream of Walla Walla Street.	None	+1158	
Spring Creek Tributary 1b	Approximately 1.34 miles downstream of South 62nd Avenue.	None	+1112	Unincorporated Areas of Yakima County.
	Approximately 0.38 mile upstream of South 90th Avenue.	None	+1284	
Spring Creek Tributary 1b Overflow to Spring Creek Tributary 1.	Approximately 0.60 mile downstream of South 74th Avenue.	None	+1185	Unincorporated Areas of Yakima County.
	Approximately 1,544 feet upstream of South 74th Avenue.	None	+1221	
Spring Creek Tributary 2	Approximately 947 feet downstream of Springcreek Road.	+1082	+1081	City of Yakima.
	Approximately 0.40 mile upstream of West Washington Avenue.	None	+1132	

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ADDRESSES

City of Union Gap

Maps are available for inspection at City Hall, 102 West Ahtanum Road, Union Gap, WA 98903.

City of Yakima

Maps are available for inspection at City Hall, 129 North 2nd Street, Yakima, WA 98901.

Unincorporated Areas of Yakima County

Maps are available for inspection at the Yakima County Courthouse, 128 North 2nd Street, Yakima, WA 98901.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Dated: November 22, 2011.

Sandra K. Knight,

Deputy Associate Administrator for Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. 2011–30710 Filed 11–28–11; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 4, 19, and 52

[FAR Case 2010–014; Docket 2010–0014; Sequence 1]

RIN 9000–AL99

Federal Acquisition Regulation; Updates to Contract Reporting and Central Contractor Registration

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to limit the use of generic substitutes instead of Data Universal Numbering System (DUNS) numbers, and update the policies and procedures associated with reporting in the Federal Procurement Data System (FPDS). Additionally, changes are proposed for the clauses requiring contractor registration in the Central Contractor Registration (CCR) database and DUNS number reporting.

DATES: Interested parties should submit written comments to the Regulatory Secretariat at one of the addresses

shown below on or before January 30, 2012 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR case 2010–014 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov.* Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2010–014'' under the heading ''Enter Keyword or ID'' and selecting ''Search.'' Select the link ''Submit a Comment'' that corresponds with ''FAR Case 2010–014.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FAR Case 2010–014'' on your attached document.
- *Fax:* (202) 501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417.

Instructions: Please submit comments only and cite FAR Case 2010–014, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov,* including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Clare McFadden, Procurement Analyst, at (202) 501–0044 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR Case 2010–014.

SUPPLEMENTARY INFORMATION:

I. Background

For decades, the DUNS number provided by Dun & Bradstreet (D&B) has been the Federal Government's unique identifier for contractors. It is used to (1) Uniquely identify a contractor entity, and (2) to roll-up Government procurements to the ultimate parent organization to show the corporate family receiving U.S. obligations. Furthermore, the DUNS number is the identifier for the FPDS and for the Federal Funding Accountability and Transparency Act of 2006 (Transparency Act) reporting to *USAspending.gov.*

Due to legitimate challenges encountered with overseas contracting, a practice existed using a generic DUNS number, such as ''Miscellaneous Foreign Vendor'' to enable accounting of the obligation without explicit identification of the vendor, *i.e.,* foreign local contractors where D&B registration is impracticable, or foreign contractors when identification may endanger the contractor.

When a generic DUNS number is used, the identity of the contractor is masked beyond the local contracting office. The contractor's identification for all downstream reporting processes is the name of the generic DUNS number, for example, ''Miscellaneous Foreign Vendor''.

The practice of using generic DUNS numbers adversely affects the transparency of the Government's data, including Transparency Act contract reporting. Also, the contractor is not able to access and perform its own reporting requirements, such as Transparency Act subcontract reporting, because the contract is not associated with the contractor in Federal-wide processes. As such, the use of a generic DUNS number should be limited to those actions where it is truly necessary. The proposed rule includes requirements intended to more strictly limit the use of the generic DUNS number to foreign contract actions valued at or below $25,000.

For greater transparency and clarification, updates or corresponding changes in procedures and clauses proposed in FAR parts 1, 4, 19, and 52 are related to the use of the DUNS number, and CCR and FPDS reporting.

II. Proposed Changes to FAR

A. Changes to FAR Part 1

FAR part 1.106 is updated to include clauses 52.204–XX, Data Universal Numbering System DUNS) Maintenance and 52–204–YY, Central Contractor Registration (CCR) Maintenance, to existing OMB Paperwork Reduction Act Approvals.

B. Changes to FAR Part 4

FAR 4.603, Policy, paragraphs (a) and (b) are clarified to indicate that contract reporting for the Transparency Act, and in FPDS, shall be made on all unclassified contract actions. This is to emphasize that classified contract actions are exempt from being reported.

FAR 4.603(c) is amended to update the name of the FPDS data field from ''Funding Agency'' to ''Program/Funding Agency'' and indicate that the ''Office Codes'' must also be reported by each agency in FPDS. The National Institute of Standards and Technology (NIST) reference was removed since NIST retired its report and the data will be maintained now in FPDS only. FAR 4.603(d) language encouraging FAR-exempt agencies to report contract actions in FPDS is deleted.

FAR 4.604, Responsibilities, proposed amendments include changes to paragraph (b) to add procedures clarifying the contracting officer's responsibility to complete rather than submit the contract action report (CAR) and that when there is a draft or error status, it is not considered complete. Paragraph (b)(2) is amended to include a timeline of three business days for completion of the CAR regardless of whether the contract writing system is integrated with FPDS or not. Paragraph (b)(3), which provided a timeline of three business days, was deleted and combined with paragraph (b)(2).

At FAR 4.604(c), it is proposed that the Chief Acquisition Officer of each agency now submit its annual certified CAR data report to GSA within 120 days after the end of each fiscal year.

FAR 4.605, Procedures, is proposed for revision to clarify when a generic DUNS number can be used. A new paragraph (c) labeled *''Generic Duns''* is proposed, to discourage use of generic DUNS numbers. Additionally, tighter controls for use of the generic DUNS numbers are established by deleting language indicating that the contracting officer could use generic DUNS numbers identified in CCR. The procedures for use of a generic DUNS number are revised and moved from FAR 4.605(b) to FAR 4.605(c). The proposed generic DUNS number requirements are similar to existing language at FAR 4.605(b) except that use of a generic DUNS number will be limited to contract actions valued at or below $25,000, or contracts awarded to individuals for performance overseas. The classified or national security circumstance for using a generic DUNS number will be deleted. The intent is to limit use of generic DUNS numbers to small dollar value contract actions, or contracts awarded to individuals for performance overseas, and to clarify that contract actions in which the required data would constitute classified information shall not be reported. At FAR 4.605(c)(2)(iii), language was added to require that a written determination be in the file explaining the decision to use a generic DUNS as a protection from harm to the mission, contractor, or customer. A determination is required because use of a generic number is contrary to the Transparency Act requirements to make publicly available the total amount of Federal funding awarded to a contractor.

FAR 4.606, Reporting Data, paragraph (b) was clarified to inform agencies subject to the FAR that actions other than those required to be reported under FAR 4.606(a) may be reported in FPDS only when the actions can be segregated from FAR-based actions, and approved by the GSA FPDS Program Office. Existing language requires agencies to contact the FPDS Program Office when

they desire to report items listed at FAR 4.606(b); those items listed at FAR (b)(4) through (6), (8), and (9) are now proposed to be actions not to be reported in FPDS under FAR 4.606(c), along with contract actions in which the required data would constitute classified information. Classified actions are not reported to FPDS, since FPDS is not approved to handle classified information, but this is not expressly stated in the FAR, so language is proposed to clarify that classified actions are not to be reported in FPDS. At FAR 4.606(d), agencies not subject to the FAR must first receive approval before reporting information in FPDS, to enable improved internal controls and reporting.

FAR 4.607, Solicitation provisions, is renamed as ''Solicitation provisions and contract clause.'' A new clause 52.204–XX, Data Universal Numbering System (DUNS) Number Maintenance, was added for contracts not containing the clause at 52.204–YY, Central Contractor Registration Maintenance.

FAR 4.1102, Policy, is changed to clarify that contractors are not required to be registered in CCR prior to micro-purchases made using a Governmentwide purchase card. A change is also proposed to indicate that contracts awarded and performed outside the United States are not required to be registered in CCR, if the contract is less than $25,000. This corresponds to the change associated with the use of the DUNS number at FAR 4.605(c). An exception to CCR registration is added for work outside the United States in danger zones.

At FAR 4.1103(a)(2), DoD, GSA, and NASA updated Federal Service Desk Web site information (*http://www.fsd.gov*) where CCR registration information can be located.

At 4.1103(b)(3), DoD, GSA, and NASA added language to indicate that when a contract action is awarded under unusual and compelling urgency circumstances (see FAR 6.302–2), the contracting officer shall require the contractor to be registered in CCR within 30 days after contract award, or before three days prior to submission of the first invoice, whichever occurs first. This change will allow, under such circumstances, the contractor to accomplish its reporting requirements (*e.g.,* Transparency Act executive compensation and subaward reporting), and the Government to make more effective use of contractor information in CCR for completing administrative tasks, such as paying invoices.

FAR 4.1105, Solicitation provision and contract clauses, was revised to include the prescription for a new clause at 52.204–YY, Central Contractor Registration Maintenance.

C. Proposed Changes to FAR Part 19

FAR 19.708(b)(1)(iii) was changed to include an additional reference at FAR 4.606(c)(6) for actions not reported in FPDS.

D. Proposed Changes to FAR Part 52

FAR 52.204–6, Data Universal Numbering System (DUNS) Number, was revised to include a definition for DUNS number. FAR 52–204–7(f) and FAR 52–212–4 were updated to include the Federal Service Desk Web site for CCR information.

A new FAR clause at 52.204–XX, Data Universal Numbering System (DUNS) Number Maintenance, was added to ensure that the DUNS number is maintained with D&B throughout the life of the contract. It requires the contractor to communicate any change to the DUNS number to the contracting officer within 30 days after the change, so an appropriate modification can be issued to update the contract data. It also clarifies that a change in the DUNS number does not necessarily require a novation be accomplished.

FAR 52.204–7, Central Contractor Registration, was revised to become a provision. References to contractor requirements at paragraphs (f) and (g) are deleted and moved to the new clause at FAR 52.204–XX, Central Contractor Registration Maintenance. Additionally, updated contact phone numbers are provided where offerors may obtain information on registration and annual confirmation requirements.

Alternate I of FAR 52.204–7 language was added for unusual and compelling urgency awards allowing for CCR registration within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first. This corresponds to the text at FAR 4.1103(b)(3).

A new clause at FAR 52.204–YY, Central Contractor Registration Maintenance, was added. It contains language currently at 52.204–7, which states that the contractor is responsible for the accuracy and completeness of the data within the CCR database, and responsible for any liability resulting from the Government's reliance on inaccurate or incomplete data, and that it is the contractor's responsibility to remain registered in the CCR database after the initial registration, and to review and update on an annual basis information in the CCR database to ensure it is current, accurate, and complete. It contains new language similar to FAR 52.204–XX on the DUNS number.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.,* because the proposed FAR amendments affect internal Government procedures, or clarify existing procedures. Additionally, the requirement for the contractor to report any changes to their DUNS number to the contracting officer throughout the life of the contract may be rare, but should it occur, the impact may be minimal. Therefore, an Initial Regulatory Flexibility Analysis has not been performed.

DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (FAR Case 2010–014), in correspondence.

V. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 1, 4, 19, and 52

Government procurement.

William Clark,

Acting Director, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 1, 4, 19, and 52 as set forth below:

1. The authority citation for 48 CFR parts 1, 4, 19, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATION SYSTEM

1.106 [Amended]

2. Amend section 1.106, in the table following the introductory text, by adding in numerical sequence, FAR segment ''52.204–XX'' and its corresponding OMB Control Number ''9000–0145'', and FAR segment ''52.204–YY'' and its corresponding OMB Control Number ''9000–0159''.

PART 4—ADMINISTRATIVE MATTERS

3. Revise section 4.603 to read as follows:

4.603 Policy.

(a) In accordance with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282), all unclassified Federal award data must be publicly accessible.

(b) Executive agencies shall use FPDS to maintain publicly available information about all unclassified contract actions exceeding the micro-purchase threshold, and any modifications to those actions that change previously reported contract action report data, regardless of dollar value.

(c) Agencies awarding assisted acquisitions or direct acquisitions must report these actions and identify the Program/Funding Agency and Office Codes from the applicable agency codes maintained by each agency at FPDS. These codes represent the agency and office that has provided the predominant amount of funding for the contract action.

(d) Agencies awarding contract actions with a mix of appropriated and non-appropriated funding shall only report the full appropriated portion of the contract action in FPDS.

4. Amend section 4.604 by revising paragraphs (b) and (c) to read as follows:

4.604 Responsibilities.

* * * * *

(b)(1) The responsibility for the completion and accuracy of the individual contract action report (CAR) resides with the contracting officer who awarded the contract action. CARs in a draft or error status in FPDS are not considered complete.

(2) The CAR must be confirmed for accuracy by the contracting officer prior to release of the contract award. The CAR must then be completed in FPDS within three business days after contract award.

(3) For any action awarded in accordance with 6.302–2 or pursuant to any of the authorities listed at subpart 18.2, the CAR must be completed in FPDS within 30 days after contract award.

(4) When the contracting office receives written notification that a contractor has changed its size status in accordance with the clause at 52.219–28, Post-Award Small Business Program Representation, the contracting officer must submit a modification contract action report to ensure that the updated size status is entered in FPDS.

(c) The chief acquisition officer of each agency that is required to report its contract actions must submit an annual certification of whether, and to what degree, agency CAR data for the preceding fiscal year is complete and accurate. The certification must be submitted to the General Services Administration (GSA), in accordance with FPDS guidance, within 120 days after the end of each fiscal year.

5. Amend section 4.605 by revising paragraphs (b) and (c); and adding paragraph (d) to read as follows.

4.605 Procedures.

* * * * *

(b) *Data Universal Numbering System (DUNS).* The contracting officer must identify and report a DUNS number (Contractor Identification Number) for the successful offeror on a contract action. The DUNS number reported must identify the successful offeror's name and address as stated in the offer and resultant contract, and as registered in the Central Contractor Registration (CCR) database in accordance with the clause at 52.204–7, Central Contractor Registration. The contracting officer must ask the offeror to provide its DUNS number by using either the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, the provision at 52.204–7, Central Contractor Registration, or the provision at 52.212–1, Instructions to Offerors—Commercial Items.

(c) *Generic DUNS.* (1) The use of a generic DUNS should be limited, and only used in the situations described in (c)(2) of this section; this does not supersede the requirements of either provision 52.204–6 or 52.204–7 (if present in the solicitation) for the contractor to have a DUNS number assigned.

(2) An authorized generic DUNS number, maintained by the Integrated Acquisition Environment (IAE) program office (*http://www.acquisition.gov*), may be used to report contract actions in lieu of the contractor's actual DUNS number only for—

(i) Contract actions valued at or below $25,000 that are awarded to a contractor that is—

(A) A student;

(B) A dependent of a veteran, foreign service officer, or military member assigned overseas; or

(C) Located outside the United States and its outlying areas as defined in 2.101 for work to be performed overseas, and the contractor does not otherwise have a DUNS number;

(ii) Contracts awarded to individuals for performance overseas; or

(iii) Specific public identification of the contracted party could endanger the mission, contractor, or recipients of the acquired goods or services.

(3) The contracting officer must include a written determination in the contract file of the decision, as it is contrary to the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282).

(d) The contracting officer, when entering data in FPDS, shall use the instructions at *https://www.fpds.gov* to identify any action funded in whole or in part by the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5).

6. Amend section 4.606 by—

a. Revising the introductory text of paragraph (b);

b. Removing from paragraph (b)(2) ''nonappropriated'' and adding ''non-appropriated'' in its place;

c. Removing paragraphs (b)(4) through (6);

d. Redesignating paragraph (b)(7) as paragraph (b)(4); and

e. Removing paragraphs (b)(8) and (9);

f. Adding paragraphs (c)(6) through (11); and

g. Revising paragraph (d).

The revised added text reads as follows:

4.606 Reporting data.

* * * * *

(b) *Reporting Other Actions.* Agencies may submit actions other than those listed at paragraph (a)(1) of this section only if they are able to be segregated from FAR-based actions and this is approved in writing by the GSA FPDS

Program Office. Prior to the commencement of reporting, agencies must contact the FPDS Program Office at *integrated.acquisition@gsa.gov* if they desire to submit any of the following types of activity:

* * * * *

(c) * * *

(6) Contract actions in which the required data would constitute classified information.

(7) Resale activity (*i.e.,* commissary or exchange activity).

(8) Revenue generating arrangements (*i.e.,* concessions).

(9) Training expenditures not issued as orders or contracts.

(10) Interagency agreements other than inter-agency acquisitions required to be reported at 4.606(a)(1).

(11) Letters of obligation used in the A–76 process.

(d) *Actions not subject to the FAR.* Agencies not subject to the FAR may be required by other authority (*e.g.,* statute, OMB, or internal agency policy) to report certain information to FPDS. When this is applicable, agencies must first receive approval from the GSA FPDS Program Office.

7. Amend section 4.607 by revising the section heading and paragraph (a); by redesignating paragraph (b) as paragraph (c); and adding a new paragraph (b) to read as follows:

4.607 Solicitation provisions and contract clause.

(a) Insert the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations that do not contain the provision at 52.204–7, Central Contractor Registration, or meet any exception at 4.605(c)(2).

(b) Insert the clause at 52.204–XX, Data Universal Numbering System (DUNS) Number Maintenance, in solicitations and resulting contracts that contain the provision at 52.204–6, Data Universal Numbering System (DUNS).

* * * * *

7. Amend section 4.1102 by—

a. Amending paragraph (a)(1) by—

1. Revising paragraph (a)(1);

2. Removing from paragraph (3)(i) ''; or'' adding ''or'' in its place;

3. Redesignating paragraph (3)(ii) as paragraph (3)(iii);

4. Adding a new paragraph (3)(ii);

5. Redesignating paragraphs (4) through (6) as paragraphs (5) through (7);

6. Adding a new paragraph (4); and

7. Revising the newly redesignated paragraph (6); and

b. Removing from paragraph (b) ''or (a)(4)''.

The revised and added text reads as follows:

4.1102 Policy.

(a) * * *

(1) Purchases under the micro-purchase threshold that use a Governmentwide commercial purchase card as both the purchasing and payment mechanism, as opposed to using the purchase card for payment only;

* * * * *

(3) * * *

(ii) Contracting officers located outside the United States and its outlying areas, as defined in 2.101, for work to be performed in support of diplomatic or developmental operations, including those performed in support of foreign assistance programs overseas, in an area that has been designated by the Department of State as a danger pay post (see *http://aoprals.state.gov/Web920/danger_pay_all.asp*); or

* * * * *

(4) Contracts with individuals for performance overseas;

* * * * *

(6) Contract awards at or below $25,000 awarded outside the United States to foreign vendors for work performed outside the United States, if it is impractical to obtain CCR registration; and

* * * * *

8. Amend section 4.1103 by—

a. Removing from paragraph (a)(2)(i) ''*http://www.ccr.gov,*'' and adding ''*http://www.fsd.gov;*'' in its place;

b. Removing paragraph (a)(2)(ii), and redesignating paragraph (a)(2)(iii) as (a)(2)(ii);

c. Removing from paragraph (b)(2) the period and adding ''; or'' in its place; and

d. Adding a new paragraph (b)(3).

The added text reads as follows:

4.1103 Procedures.

* * * * *

(b) * * *

(3) If the contract action is being awarded pursuant to 6.302–2, the contractor must be registered in CCR within 30 days after contract award, or before three days prior to submission of the first invoice, whichever occurs first.

9. Revise section 4.1105 to read as follows:

4.1105 Solicitation provision and contract clauses.

(a)(1) Except as provided in 4.1102(a), use the provision at 52.204–7, Central Contractor Registration, in solicitations.

(2) If the solicitation is anticipated to be awarded in accordance with 4.1102(a)(5), the contracting officer shall use the provision at 52.204–7, Central Contractor Registration with its Alternate I.

(b)(1) Insert the clause at 52.204–YY, Central Contractor Registration Maintenance, in solicitations that contain the provision at 52.204–7, and resulting contracts.

4.1402 [Amended]

10. Amend section 4.1402 by removing from paragraph (b) ''4.605(b)(2)'' and adding ''4.605(c)(2)'' in its place.

PART 19—SMALL BUSINESS PROGRAMS

19.708 [Amended]

11. Amend section 19.708 by removing from paragraph (b)(1)(iii) ''or 4.606(c)(5) and adding ''4.606(c)(5) or (c)(6)'' in its place.

PART 52—SOLICITATION PROVISIONS AND CLAUSES

52.204–5 [Amended]

12. Amend section 52.204–5 by removing from the introductory text ''4.607(b)'' and adding ''4.607(c)'' in its place.

13. Amend section 52.204–6 by revising the date of the provision; and redesignating paragraphs (a) and (b) as paragraphs (b) and (c), respectively; and adding a new paragraph (a) to read as follows:

52.204–6 Data Universal Numbering System (DUNS) Number.

* * * * *

Data Universal Numbering System (DUNS) Number (Date)

(a) Definition. *Data Universal Numbering System (DUNS) number,* as used in this provision, means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities, which is used as the identification number for Federal contractors.

* * * * *

14. Amend section 52.204–7 by

a. Revising the introductory text;

b. Revising the date of the provision;

c. Removing from the introductory text of paragraph (a) ''clause'' and adding ''provision'' in its place;

d. Amending the definition ''Registered in the CCR database'' by removing from paragraphs (1) and (2) ''Contractor'' and adding ''offeror'' in its place;

e. Removing paragraphs (f) and (g);

f. Redesignating paragraph (h) as paragraph (f); and revising the newly designated paragraph (f); and

g. Adding Alternate I.

The revised and added text reads as follows:

52.204–7 Central Contractor Registration.

As prescribed in 4.1105(a), use the following provision.

Central Contractor Registration (Date)

* * * * *

(f) Offerors may obtain information on registration and annual confirmation requirements via the Internet at *http://www.fsd.gov.*

(End of provision)

Alternate I (DATE). As prescribed in 4.1105(b), substitute the following paragraph (b)(1) for paragraph (b)(1) of the basic provision:

(b)(1) By submission of an offer, the offeror acknowledges the requirement that a prospective awardee shall be registered in the CCR database prior to award, during performance, and through final payment of any contract, basic agreement, basic ordering agreement, or blanket purchasing agreement resulting from this solicitation. If registration prior to award is not possible, the awardee shall be registered in the CCR database within 30 days after award or before three days prior to submission of the first invoice, whichever occurs first.

15. Add sections 52.204–XX and 52.204–YY to read as follows:

52.204–XX Data Universal Numbering System (DUNS) Number Maintenance.

As prescribed in 4.607(b), insert the following clause:

Data universal Numbering System (DUNS) Number Maintenance (Date)

(a) *Definition. Data Universal Numbering System (DUNS) number* as used in this clause, means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities, which is used as the identification number for Federal Contractors.

(b) The Contractor shall ensure that the DUNS number is maintained with Dun & Bradstreet throughout the life of the contract. The Contractor shall communicate any change to the DUNS number to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the DUNS number does not necessarily require a novation be accomplished. Dun & Bradstreet may be contacted—

(1) Via the Internet at *http://fedgov.dnb.com/webform* or if the Contractor does not have Internet access, it may call Dun and Bradstreet at 1-(866) 705–5711 if located within the United States; or

(2) If located outside the United States, by contacting the local Dun and Bradstreet office.

(End of clause)

52.204–YY Central Contractor Registration Maintenance.

As prescribed in 4.1105(b), use the following clause:

Central Contractor Registration Maintenance (Date)

(a) *Definitions.* As used in this clause—

Central Contractor Registration (CCR) database means the primary Government repository for Contractor information required for the conduct of business with the Government.

Data Universal Numbering System (DUNS) number means the 9-digit number assigned by Dun and Bradstreet, Inc. (D&B) to identify unique business entities, which is used as the identification number for Federal Contractors.

Data Universal Numbering System+4 (DUNS+4) number means the DUNS number assigned by D&B plus a 4-character suffix that may be assigned by a business concern. (D&B has no affiliation with this 4-character suffix.) This 4-character suffix may be assigned at the discretion of the business concern to establish additional CCR records for identifying alternative Electronic Funds Transfer (EFT) accounts (see subpart 32.11) for the same concern.

Registered in the CCR database means that—

(1) The Contractor has entered all mandatory information, including the DUNS number or the DUNS+4 number, into the CCR database; and

(2) The Government has validated all mandatory data fields, to include validation of the Taxpayer Identification Number (TIN) with the Internal Revenue Service (IRS), and has marked the record ''Active''. The Contractor will be required to provide consent for TIN validation to the Government as a part of the CCR registration process.

(b) The Contractor is responsible for the accuracy and completeness of the data within the CCR database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the CCR database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the CCR database to ensure it is current, accurate, and complete. Updating information in the CCR does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(c)(1)(i) If a Contractor has legally changed its business name, ''doing business as'' name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in subpart 42.12, the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to–

(A) Change the name in the CCR database;

(B) Comply with the requirements of subpart 42.12; and

(C) Agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor shall provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (c)(1)(i) of this clause, or fails to perform the agreement at paragraph (c)(1)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the CCR information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the ''Suspension of Payment'' paragraph of the electronic funds transfer (EFT) clause of this contract.

(2) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the CCR record to reflect an assignee for the purpose of assignment of claims (see subpart 32.8, Assignment of Claims). Assignees shall be separately registered in the CCR database. Information provided to the Contractor's CCR record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the ''Suspension of payment'' paragraph of the EFT clause of this contract.

(3) The Contractor shall ensure that the DUNS number is maintained with Dun & Bradstreet throughout the life of the contract. The Contractor shall communicate any change to the DUNS number to the Contracting Officer within 30 days after the change, so an appropriate modification can be issued to update the data on the contract. A change in the DUNS number does not necessarily require a novation be accomplished. Dun & Bradstreet may be contacted—

(i) Via the Internet at *http://fedgov.dnb.com/webform* or if the Contractor does not have Internet access, it may call Dun and Bradstreet at 1-(866) 705–5711 if located within the United States; or

(ii) If located outside the United States, by contacting the local Dun and Bradstreet office.

(d) Contractors may obtain additional information on registration and annual confirmation requirements via the Internet at *http://www.fsd.gov.*

(End of clause)

16. Amend section 52.212–1 by revising the date of the provision; and by removing from paragraph (k) ''*http://www.ccr.gov or by calling 1–(888) 227–2423 or (269)–961–*5757.'' and by adding ''*http://www.fsd.gov.''* in its place. The revised text reads as follows:

52.212–1 As prescribed in 12.301(b)(1), insert the following provision:

Instructions to Offerrors-Commercial items (Date)

* * * * *

17. Amend section 52.212–4 by revising the date of the clause; and removing from paragraph (t)(4) the words ''*http://www.ccr.gov* or by calling 1-(888) 227–2423 or (269) 961–5757.'' and adding ''*http://www.fsd.gov.''* in its place. The revised text reads as follows:

52.212–4 Contract Terms and Conditions—Commercial Items.

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Contract Terms and Conditions—Commercial Items (Date)

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[FR Doc. 2011–30622 Filed 11–28–11; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Parts 191, 192, 195 and 198

[Docket No. PHMSA–2010–0026]

RIN 2137–AE59

Pipeline Safety: Miscellaneous Changes to Pipeline Safety Regulations

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: PHMSA is proposing to make miscellaneous changes to the pipeline safety regulations. The proposed changes would correct errors, address inconsistencies, and respond to rulemaking petitions. The requirements in several subject matter areas would be affected, including the performance of post-construction inspections; leak surveys of Type B onshore gas gathering lines; the requirements for qualifying plastic pipe joiners; the regulation of ethanol; the transportation of pipe; the filing of offshore pipeline condition reports; the calculation of pressure reductions for hazardous liquid pipeline anomalies; and the odorization of gas transmission lateral lines.

The proposed changes are addressed on an individual basis and, where appropriate, would be made applicable to the safety standards for both gas and hazardous liquid pipelines. Editorial changes are also included.

DATES: Submit comments by February 3, 2012.

ADDRESSES: Comments should reference Docket No. PHMSA–2010–0026 and may be submitted in the following ways:

- *E-Gov Web site: http://www.regulations.gov.* This Web site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–(202) 493–2251.
- *Mail:* Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand Delivery:* DOT Docket Management System, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: If you submit your comments by mail, please submit two copies. To receive confirmation that PHMSA received your comments, include a self-addressed stamped postcard.

Note: Comments are posted without changes or edits to *http://www.regulations.gov,* including any personal information provided. There is a privacy statement published on *http://www.regulations.gov.*

Privacy Act Statement: Anyone may search the electronic form of all comments received for any of our dockets. You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (70 FR 19477), or visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: John A. Gale, Director of Standards and Rulemaking by telephone at (202) 366–4046 or by Email at *john.gale@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

PHMSA is proposing to make miscellaneous changes to the pipeline safety regulations. The proposed changes would be relatively minor, would impose minimal (if any) burden, and would clarify the existing regulations. The following issues are addressed below:

- Responsibility to Conduct Construction Inspections
- Leak Surveys for Type B Gathering Lines
- Qualifying Plastic Pipe Joiners
- Mill Hydrostatic Tests for Pipe to Operate at Alternative MAOP
- Regulating the Transportation of Ethanol by Pipeline
- Limitation of Indirect Costs in State Grants
- Transportation of Pipe
- Threading Copper Pipe
- Offshore Pipeline Condition Reports
- Calculating Pressure Reductions for Hazardous Liquid Pipeline Integrity Anomalies
- Testing Components other than Pipe Installed in Low-Pressure Gas Pipelines
- Alternative MAOP Notifications
- National Pipeline Mapping System
- Welders vs. Welding Operators
- Components Fabricated by Welding
- Odorization of Gas
- Editorial Amendments

Responsibility To Conduct Construction Inspections—NAPSR–CR–1–02

Section 192.305 states that each gas transmission line or main must be inspected to ensure that it is constructed in accordance with the requirements of 49 CFR part 192. These inspections are important because transmission pipelines and mains are generally buried after construction. Subsequent examinations often involve a difficult excavation process.

The National Association of Pipeline Safety Representatives (NAPSR) [1] has suggested that the current regulation should be changed to require a greater degree of independence. Specifically, NAPSR believes that contractors who install a transmission line or main should be prohibited from inspecting their own work for compliance purposes.

PHMSA agrees with NAPSR. Section 192.305 does not prohibit a contractor who installs a transmission line or main from inspecting their own work; that lack of independence raises public safety concerns. PHMSA believes the same concerns apply to non-contractor pipeline personnel as well. Accordingly, PHMSA is proposing to revise § 192.305 to specify that a transmission pipeline or main cannot be inspected by someone who participated in its construction.

Section 195.204 imposes a similar construction inspection requirement for hazardous liquid pipelines. PHMSA has proposed to make the same rule change applicable to § 195.204.

Leak Surveys for Type B Gathering Lines

In March 2006 (71 FR 13289), PHMSA established a new method for determining whether a gas pipeline is an ''onshore gathering line.'' PHMSA also imposed new safety standards for ''regulated onshore gathering lines,'' which divided regulated onshore gathering lines into two risk-based categories.

Type A gathering lines are metallic lines with a MAOP of 20% or more of specified minimum yield strength (SMYS), as well as nonmetallic lines with an MAOP of more than 125 psig, in a Class 2, 3, or 4 location. These lines are subject to all of the requirements in Part 192 that apply to transmission lines, except for the regulation that requires the accommodation of in-line inspection tools in the design and construction of certain new and replaced pipelines (49 CFR 192.150) and

[1] NAPSR is a non-profit organization of state pipeline safety personnel who serve to promote pipeline safety in the United States and its territories. Its membership includes the staff manager responsible for regulating pipeline safety from each state that is certified to do so or conducts inspections under an agreement with DOT in lieu of certification.

the integrity management requirements of Part 192, Subpart O. Operators of Type A gathering lines are also permitted to use an alternative process for demonstrating compliance with the requirements of Part 192, Subpart N, Qualification of Pipeline Personnel.

Type B gathering lines includes metallic lines with a MAOP of less than 20% of SMYS, as well as nonmetallic lines with a MAOP of 125 psig or less, in a Class 2 location (as determined under one of three formulas) or in a Class 3 or Class 4 location. These lines are subject to less stringent requirements than Type A gathering lines. Specifically, any new or substantially changed Type B line must comply with the design, installation, construction, and initial testing and inspection requirements for transmission lines and, if of metallic construction, the corrosion control requirements for transmission lines. Operators must also include Type B gathering lines in their damage prevention and public education programs, establish the MAOP of those lines under 49 CFR 192.619, and comply with the requirements for maintaining and installing line markers that apply to transmission lines.

NAPSR notes that the current regulations do not require leak surveys of Type B gathering lines. NAPSR states that gas leaks are the primary hazard from low-stress pipelines, including Type B gathering lines, and that leak detection is a necessary risk-management measure. NAPSR further notes that 49 CFR 192.706 requires leak surveys of transmission lines at intervals not exceeding 15 months, but at least once each calendar year, and more frequently in densely populated areas. NAPSR believes that operators of Type B gathering lines should be subject to the same requirements.

NAPSR notes that operators had to perform leak surveys of non-rural gas gathering lines prior to the March 2006 final rule. NAPSR also states that some Type B gathering lines are located under broad paved areas where electrical surveys (another means of detecting pipe damage) may be difficult to perform and leaking gas could migrate under the pavement and accumulate in surrounding structures. NAPSR believes that leak detection surveys should be required to ensure the safety of these lines.

PHMSA agrees. Leak surveys are an effective means of ensuring the integrity of low-stress pipelines. Accordingly, this proposed rule would require operators of Type B gathering lines to perform leak surveys in accordance with § 192.706.

III. Qualifying Plastic Pipe Joiners

Section 192.285 contains requirements for qualifying persons to make joints in plastic pipe. Under § 192.285(c), ''[a] person must be re-qualified under an applicable procedure, if during any 12-month period that person: (1) Does not make any joints under that procedure; or (2) Has three joints or three percent of the joints made, whichever is greater, under that procedure that are found unacceptable by testing under § 192.513.''

NAPSR (2008–03–AC–1) has two concerns with the current requirements. First, NAPSR states that many operators are required to perform requalification on a less than 12-month period to ensure that joiners are not disqualified. According to NAPSR, this leads to a regressing requalification schedule (*i.e.,* scheduling requalification for a period less than 12 months) and occasionally requires tests at times that are not advantageous from a cost and quality standpoint. NAPSR notes that most of the periodic requirements in 49 CFR part 192 avoid this problem by providing flexibility in the performance interval, such as requiring actions annually not to exceed 15 months. NAPSR suggests that the same flexibility be applied to plastic pipe joiner qualification.

NAPSR's second concern is with the number of unacceptable joints permitted under the current regulation. NAPSR notes that the installation of proper joints is important to ensuring the safety of plastic pipelines, and that allowing a joiner with a demonstrated inability to join pipe to continue to engage in that activity is inconsistent with pipeline safety. NAPSR suggests that the current requirement should be revised to require requalification of a joiner if any production joint is found unacceptable by the required testing.

PHMSA agrees with NAPSR in both respects. Accordingly, the proposed rule would revise § 192.285 to provide greater scheduling flexibility and require requalification of a joiner if any production joint is found unacceptable.

Mill Hydrostatic Tests for Pipe To Operate at Alternative MAOP

Section 192.112 specifies additional design requirements for new or existing pipeline segments to qualify for the alternative MAOP permitted under 49 CFR 192.620. PHMSA is proposing to revise paragraph (e)(1) of § 192.112 by eliminating the allowance for combining loading stresses imposed by pipe mill hydrostatic testing equipment for the required mill hydrostatic test.

Mill hydrostatic testing is used to ensure that new pipe has adequate strength. Section 192.112 applies to pipe that will operate at the higher stresses allowed under the alternate MAOP. Therefore, it is important that adequate strength be assured. During the 2008 construction season, PHMSA identified a number of cases where new pipe did not meet its specified strength requirements. Eliminating the allowance to combine equipment loading stresses will have the effect of increasing the internal test pressure for mill hydrostatic tests for new pipe to be operated at alternate MAOP. When combined with pipe mill dimensional checks for expansion, that change will help assure that all new pipes for this service receive an adequate mill test and have adequate strength.

Regulating the Transportation of Ethanol by Pipeline

On August 10, 2007, (72 FR 45002; Docket number PHMSA–2007–28136) PHMSA published a policy statement and request for comment on the transportation of ethanol, ethanol blends, and other biofuels by pipeline. PHMSA noted in the policy statement that the demand for biofuels was projected to increase in the future as a result of several Federal energy policy initiatives, and that the predominant modes for transporting such commodities (*i.e.,* truck, rail, or barge) would expand over time to include greater use of pipelines. PHMSA also stated that ethanol and other biofuels are substances that ''may pose an unreasonable risk to life or property'' within the meaning of 49 U.S.C. 60101(a)(4)(B) and accordingly these materials constitute ''hazardous liquids for purposes of the pipeline safety laws and regulations. PHMSA went on to say that the agency was considering a possible modification to § 195.2 to include ethanol and biofuels in the definition of hazardous liquid. PHMSA invited comment on that proposal and other issues related to the transportation of biofuels by pipeline.

Nine organizations submitted comments. Two trade associations concerned with hazardous liquid pipeline issues (American Petroleum Institute and Association of Oil Pipelines) submitted joint comments. Two associations dedicated to the use of bio-fuels (National Biodiesel Board and Renewable Fuels Association) submitted separate comments. Two standards developing organizations (American Society of Mechanical Engineers and National Fire Protection Association), one state pipeline safety regulator (Iowa Utilities Board), NAPSR, and one

biofuels producer (Imperium Renewables, Inc.) also submitted comments.

All of the commenters agreed that the transportation of biofuels by pipeline is likely to increase in the future, and that pure ethanol should be classified as a hazardous liquid under the Pipeline Safety Laws (49 U.S.C. 60101 *et seq.*). However, several commenters stated that a similar classification was not warranted for pure biodiesel, which has chemical properties that are different from ethanol. Most of the comments on the transportation of biodiesel focused on biodiesel-petroleum blends. As explained in the August 2007 policy statement, the transportation of biodiesel-petroleum blends is already subject to the Pipeline Safety Laws and Regulations, because petroleum and petroleum products are both defined as hazardous liquids.

PHMSA is proposing to modify its definition of hazardous liquid to include ethanol. Such a change would make clear that the transportation of pure ethanol by pipeline is subject to the requirements of 49 CFR part 195. Operators are reminded that biodiesel-petroleum and ethanol-petroleum blends are already subject to those regulations. Though PHMSA is not revising its August 10, 2007 policy statement, PHMSA is deferring a final decision on whether the definition of a hazardous liquid in 49 CFR 195.2 should be revised to include pure biodiesel. In its August 2007 policy statement, PHMSA also requested comment on whether research and development would be appropriate to support the transportation of biofuels by pipeline and for efforts to assure appropriate emergency response to pipeline accidents involving biofuels. PHMSA will consider comments in these areas in a separate proceeding.

Limitation of Indirect Costs in State Grants

PHMSA reimburses the states for a portion of the costs accrued in administering their pipeline safety programs, and Congress appropriates the funds used to make these reimbursements on a regular basis. The Pipeline Inspection Protection Enforcement and Safety Act of 2006 (PIPES Act) removed a provision that imposed a 20% cap on indirect expenses allocated to the pipeline safety program grants.

PHMSA believes that the amount of state pipeline safety grants which may be allocated to indirect expenses should be limited. Such a limitation ensures that grant funds are used principally for functions that serve directly to support implementing a pipeline safety oversight program. Accordingly, PHMSA proposes to incorporate the 20% limitation on indirect expenses into the regulations governing grants to state pipeline safety programs.

Transportation of Pipe

Section 192.65 states that pipe having a diameter-to-wall-thickness ratio of 70 to 1, or more, must be transported in accordance with the American Petroleum Institute's (API) Recommended Practices 5L1. An exception is provided for certain pipe transported before November 12, 1970. That exception allows operators to use pipe stockpiled prior to the effective date of the original pipeline safety regulations, the transportation of which cannot be verified under API standards.

During its investigation of a July 2002 pipeline incident, the National Transportation Safety Board (NTSB) found that the growth of a fatigue crack, introduced to the pipe due to inadequate loading during transportation, was a causal factor in the pipe failure. NTSB recommended that PHMSA revise its regulations to require that the transportation of all pipe be subject to the referenced API standards.

PHMSA agrees with NTSB's recommendation and proposes to delete the exclusion in § 192.65(a)(2). The amount, if any, of pipe transported prior to November 12, 1970, which remains in operator stockpiles is likely to be very small. Therefore, this change will have minimal impact on pipeline operators.

Threading Copper Pipe

Section 192.279 specifies when copper pipe may be threaded and refers to Table C1 of American Society of Mechanical Engineers (ASME) ASME/ANSI B16.5. In a letter dated June 11, 2009, the Gas Piping Technology Committee (GPTC) advised PHMSA that Table C1 was deleted in the most recent version of the ASME/ANSI B16.5, which is incorporated into 49 CFR part 192 by reference. GPTC stated that the information in Table C1 was taken from a different ASME standard, ASME B36.10M, ''Standard for Welded and Seamless Wrought Steel Pipe,'' and that this standard should be substituted as a more appropriate reference. PHMSA agrees with GPTC and is proposing to incorporate the suggested reference to ASME B36.10M in § 192.279.

Offshore Pipeline Condition Reports

In a December 1991 final rule (56 FR 637770–637771), PHMSA's predecessor agency, the Research and Special Programs Administration (RSPA), complied with a statutory mandate in Public Law 101–599 (Nov. 16, 1990) by establishing new requirements for pipelines in the Gulf of Mexico (Gulf) and its inlets. Specifically, RSPA promulgated §§ 192.612(a) and 195.413(a), which required each operator to conduct an underwater inspection of all of those lines after October 3, 1989, and before November 16, 1992. RSPA also issued §§ 191.27 and 195.57, which required operators to submit a report to RSPA within 60 days of completing those inspections.

In an August 2004 final rule (69 FR 48400), RSPA amended §§ 192.612(a) and 195.413(a) to require each operator to prepare and follow written procedures for identifying any shallow-water pipelines in the Gulf and its inlets that could be exposed or present a hazard to navigation. RSPA also amended the other provisions in §§ 192.612 and 195.413 to require operators to conduct appropriate periodic inspections of those pipelines, and to take steps to promptly report, mark, and rebury any line found to be exposed or a hazard to navigation. RSPA did not repeal or modify the reporting requirements in §§ 191.27 or 195.57.

Sections 192.612(a) and 195.413(a) no longer require operators to perform an underwater inspection of all pipelines in the Gulf and its inlets. See also Public Law 102–508 (Oct. 24, 1992) (modifying statutory mandate for underwater inspection, reporting, and reburial of pipelines in the Gulf and its inlets). Rather, those regulations only call for periodic, risk-based inspections of shallow-water pipelines. The filing of a written report within 60 days of completing all of those inspections is not consistent with such a regime. Sections 192.612(c) and 195.413(c) also require operators to file a written report with the National Response Center within 24 hours of discovering that a pipeline in those areas is exposed or a hazard to navigation. That reporting requirement is sufficient to meet PHMSA's current information collection needs.

Accordingly, PHMSA is proposing to repeal §§ 191.27 and 195.57.

Calculating Pressure Reductions for Hazardous Liquid Pipeline Integrity Anomalies

Section 195.452(h)(4)(i) specifies the actions that an operator of hazardous liquid pipelines must take after discovering an immediate repair condition. One of those actions is a temporary reduction in operating pressure as determined under the formula provided in section 451.6.2.2(b) of ASME/ANSI B31.4. The particular focus of that pressure reduction formula

is corrosion. However, corrosion is only one of the threats that could cause an immediate repair condition under § 195.452(h)(i).

PHMSA sought to modify § 195.452(h)(4)(i) in a July 17, 2007, final rule (72 FR 39017) to provide for alternative methods of calculating a pressure reduction for immediate repair conditions caused by threats other than corrosion. The Office of the Federal Register was unable to incorporate that change due to inaccurate amendatory instructions. PHMSA is again revising § 195.452(h)(4)(i) as part of this rule to make the same change as published in the July 17, 2007, final rule with corrected amendatory instructions.

Testing Components Other Than Pipe Installed in Low-Pressure Gas Pipelines

Section 192.505 specifies strength test requirements for steel pipe to operate at a hoop stress of 30 percent or more of SMYS. Paragraph (d) of § 192.505 provides an exception if a component other than pipe is the only item being replaced or added. It states that a post-installation strength test is not required if the manufacturer certifies that the component was tested to at least the pressure required for the pipeline to which it is being added, manufactured under a quality control system that assures adequate strength, or carries a pressure rating established through applicable ASME/ANSI, MSS specifications or by unit strength calculations. A similar exception is not provided if a component other than pipe is the only item being replaced or added to steel pipeline systems that operate at less than 30 percent of SMYS (§§ 192.507 and 192.509), service lines (§ 192.511), or plastic pipelines (CFR 192.513).

In a letter dated March 25, 2010, GPTC petitioned PHMSA to create such an exception by repealing paragraph (d) of § 192.505 and adding that provision to § 192.503, which imposes general requirements applicable to testing all gas pipelines. GPTC argued that the primary purpose of a post-installation strength test is to prove the integrity of the entire pipeline system. GPTC further noted that the most important parts of a single-component replacement to be checked are the joints that connect the component to the pipeline, and that these joints are currently exempted from testing for all gas pipelines by paragraph (d) of § 192.503. These joints are also required to be leak tested at operating pressure, a requirement that would not be changed by GPTC's petition.

If a component other than pipe is the only item being replaced or added to a low-stress steel line, a service line, or a plastic pipeline and the manufacturer of the component provides the certification required under § 192.505(d), PHMSA agrees that a strength test after installation is not necessary to ensure public safety. Such testing must necessarily be performed prior to installation and not as part of a test of the overall pipeline system. PHMSA proposes to grant the GPTC petition as part of this rulemaking by deleting paragraph (d) of § 192.505 and adding that provision as a new paragraph (e) to § 192.503.

Alternative MAOP Notifications

Section 192.620(c)(1) requires an operator to notify PHMSA, and in some instances the appropriate State authority, upon electing to establish a higher alternative MAOP. Such notification must be provided at least 180 days prior to commencing operations at the alternative MAOP. The 180-day allowance provides PHMSA and state regulators with sufficient time to conduct any needed inspections, including checks of the manufacturing process, visits to the pipeline construction sites, analysis of operating history of existing pipelines, and review of test records, plans, and procedures.

Operators are expected to provide PHMSA's regional offices with notice of planned alternative MAOP design and operations as early as practical, and prior to the start of pipe manufacturing and/or construction activities. Such notification avoids unnecessary delays in PHMSA's review of applicable procedures, specifications, manufacturing of pipe and external coating, field construction activities, operations & maintenance plans, and all other required documentation.

Consistent with that practice, PHMSA is proposing to revise § 192.620 to require that operators notify PHMSA field offices 180 days prior to pipe manufacturing and/or construction activities. PHMSA is also proposing to revise § 192.620(c)(8) to correct a typographical error related to the reference to § 192.611(a).

National Pipeline Mapping System

The National Pipeline Mapping System (NPMS) is a geospatial dataset that contains information about PHMSA-regulated gas transmission pipelines, hazardous liquid pipelines, and hazardous liquid low-stress gathering lines. The NPMS also contains data layers for all liquefied natural gas plants and a partial dataset of PHMSA-regulated breakout tanks.

The NPMS project began in 1998 and data submission became mandatory as a result of the Pipeline Safety Improvement Act of 2002. Operators are currently required to make a submission to the NPMS once every 12 months, or to notify NPMS staff if there were no changes during that time. An NPMS submission consists of geospatial data, attribute data and metadata, public contact information, and a transmittal letter. These requirements and acceptable formats are explained in full in the NPMS Operator Standards Manual (*http://www.npms.phmsa.dot.gov/Documents/Operator_Standards.pdf*).

PHMSA is seeking to improve its ability to compare Annual Report statistics with NPMS data. This will aid PHMSA in accurately portraying our nation's pipeline transportation network, allocating its resources, achieving the goal of becoming a data-driven organization, and conducting operator compliance efforts. The ability to accurately identify and track operators' physical assets is beneficial to PHMSA, pipeline operators, and all stakeholders who utilize such data, and ultimately helps promote pipeline safety.

Section 60132 of the Pipeline Safety Laws requires pipeline operators to make a submission to the NPMS once every 12 months, or to notify the NPMS if there were no changes from the previous submission. To ensure that all operators are complying with this requirement, PHMSA proposes to add an NPMS submission requirement to the Code of Federal Regulations.

In an Advisory Bulletin issued on July 31, 2008, PHMSA requested that operators submit their NPMS data concurrently with hazardous liquid and gas transmission annual report submissions. Annual reports are due on March 15 each year for gas transmission operators and on June 15 for LNG plant operators. Annual reports represent assets as of December 31 of the previous year. In an advisory bulletin issued on May 17, 2011, PHMSA temporarily extended those timelines for the 2010 calendar year for the owners and operators of gas transmission and gathering lines, hazardous liquid lines, and LNG facilities to account for recent revisions to the agency's reporting forms.

Toward these ends, PHMSA proposes to:

1. Require operators to follow the submission rules and dates set forth in the July 31, 2008, Advisory Bulletin. Gas transmission operators and LNG plant operators will make their NPMS submissions on or before March 15, representing assets as of December 31 of the previous year. Hazardous liquid operators will make their NPMS

submissions on or before June 15, representing assets as of December 31, of the previous year. To expedite processing, PHMSA urges operators to submit their NPMS data as early in the year as possible. A rulemaking published on November 26, 2010, requires operators to use the same Operator ID number (OPID) for the same asset for all PHMSA reporting requirements. Therefore, an OPID used in an annual report submission must match the same asset described in an NPMS submission.

2. Codify the statutory requirement for submission of NPMS data in 49 CFR parts 192, 193, and 195. An NPMS submission consists of geospatial data, attribute data and metadata, public contact information, and a transmittal letter.

For information about acceptable submission formats and the components of each element, refer to the latest edition of the NPMS Operator Standards Manual. Incomplete submissions, or submissions in unacceptable formats, will be deemed noncompliant with this regulation.

Welders vs. Welding Operators

The use of mechanized and automatic welding has become more common in pipeline construction, and the operators of such equipment must be qualified to ensure their work meets pipeline safety standards. The requirements for welders and welding operations are prescribed in subpart D, Construction, of 49 CFR parts 192 and 195. Welding operators of mechanized and automatic welding equipment have never been specifically addressed in those regulations.

The ASME Boiler and Pressure Vessel Code (BPVC) Section IX defines a welder as ''[o]ne who performs manual or semi-automatic welding.'' and a welding operator as ''[o]ne who operates machine or automatic welding equipment.'' Moreover, both the ASME BPVC Section IX and API 1104 have specific processes for the qualification of welding operators and automatic welding equipment. PHMSA's expectations of qualified personnel are consistent with the requirements in these two standards.

PHMSA is proposing to add a reference to these requirements in the applicable sections of subpart D in 49 CFR parts 192 and 195 to clarify the qualification standards for welding operators. This change will not affect the current industry practice; rather, it addresses the distinction between welders and welding operators and the specific qualification requirements under the current standards incorporated by reference in 49 CFR parts 192 and 195. Those standards are designed to ensure that qualified personnel are used for welding processes whether they are performed by welders or welding operators.

Components Fabricated by Welding

Pressure vessels can be found in meter stations, compressor stations, and other pipeline facilities to facilitate the removal of liquids and other materials from the gas stream. These vessels are designed, fabricated, and tested in accordance with the requirements of ASME BPVC Section VIII, as required by § 192.153 and § 192.165(b)(3), and the additional test requirements of § 192.505(b).

However, the pressure test requirements in ASME BPVC Section VIII were lowered from a test factor of 1.5 to 1.3 by an earlier edition of the ASME BPVC than the edition which is currently incorporated by reference. This revision created a difference in pressure testing requirements of the ASME BPVC from the test requirements of § 192.505(b), which requires a test factor of 1.5 times MAOP for meter and compressor stations, as well as any other Class 3 location. PHMSA has not reduced the testing requirements of these vessels and they must be tested to at least the pressure required for the pipeline to which they are being added.

Because the standard ASME pressure vessel test in ASME BPVC Section VIII is 1.3 times MAOP, an operator must specify the correct test pressure when placing an order for an ASME vessel to ensure it is designed and tested to the requirements of 49 CFR part 192. Unless a vessel is special ordered with a test pressure of 1.5 times MAOP prescribed by the purchaser, the vessel will be tested in accordance with the standard test factor of 1.3. If the vessel is not tested to 1.5 times MAOP, it cannot be used in a compressor or meter station, or other Class 3 location. The failure to meet this requirement can potentially lead to exceeding the design parameters of the vessel during subsequent testing of the pipeline system.

A clarification is being added to § 192.153 as a new paragraph (e) to clearly specify the design and test requirements for pressure vessels in meter stations, compressor stations, and other locations that are tested to Class 3 requirements. All ASME pressure vessels subject to § 192.153 and § 192.165(b)(3) must be designed and tested at a pressure that is 1.5 times MAOP, in lieu of the standard ASME BPVC Section VIII test pressure of 1.3 times MAOP. Additionally, § 192.165(b)(3) is being revised to refer the reader to this requirement.

This is not a change to the pressure testing requirements, as the requirements found in part 192 have not changed. This clarification is made to ensure a clear understanding of PHMSA's pressure testing requirements for certain ASME BPVC vessels in compressor and meter stations, and other Class 3 locations.

Odorization of Gas Transmission Lateral Lines

Section 192.625 contains requirements for operators to odorize combustible gas in a transmission line in Class 3 or Class 4 locations, ''so that at a concentration in air of one-fifth of the lower explosive limit, the gas is readily detectable by a person with a normal sense of smell.'' Certain exceptions are recognized by regulation, including for a lateral line ''which transports gas to a distribution center, [if] at least 50 percent of the length of that line is in a Class 1 or Class 2 location.''

Section 192.625 does not specify a clear method for calculating the length of a lateral line, and that has led to inconsistency in applying the odorization requirement. To address that concern, PHMSA proposes to amend § 192.625(b)(3) to state that the length of a lateral line for purposes of calculating whether at least 50 percent is in a Class 1 or Class 2 location is measured between the distribution center and the first upstream connection to the transmission line.

Editorial Amendments

In this NPRM, PHMSA is also proposing to make the following editorial amendments to the pipeline safety regulations:

(1) In § 195.571, to revise the reference to NACE Standard on Cathodic Protection as Incorporated by Reference in § 195.3.

(2) In § 195.3B(9), to amend ANSI/API Recommended Practice 651 to show the correct source and reference material as §§ 195.565 and 195.573(d).

(3) In § 195.2, to amend the definition of ''Alarm'' to correct an error in the codification of the new control room management regulations (74 FR 63310).

(4) In §§ 192.925(b) and (b)(2), to replace ''indirect examination'' with ''indirect inspection'' to maintain consistency with § 192.925(a) and the applicable NACE standard.

(5) In § 195.428(c), to replace ''§ 5.1.2'' with ''§ 7.1.2'' to correctly reference the overfill protection requirements for aboveground breakout tanks in the 2010 edition of API Standard 2510, which is now incorporated by reference (see § 195.3).

Regulatory Analyses and Notices

Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not reviewed by the Office of Management and Budget. This proposed rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Orders 12866 and 13563 require agencies to regulate in the ''most cost-effective manner,'' to make a ''reasoned determination that the benefits of the intended regulation justify its costs,'' and to develop regulations that ''impose the least burden on society.'' In this notice, PHMSA is proposing to amend miscellaneous provisions to clarify and eliminate unduly burdensome requirements. PHMSA is also responding to requests from industry and State pipeline safety representatives to revise its regulations. PHMSA anticipates the proposals contained in this rule will have economic benefits to the regulated community by increasing the clarity of its regulations and reducing compliance costs.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), PHMSA must consider whether rulemaking actions would have a significant economic impact on a substantial number of small entities. PHMSA is proposing to make miscellaneous changes to the pipeline safety regulations.

Description of the Reasons That Action by PHMSA Is Being Considered

PHMSA, pipeline operators, and others have identified certain errors, inconsistencies, and deficiencies in the Pipeline Safety Regulations concerning the following subjects: (1) Performance of post-construction inspections; (2) leak surveys of Type B onshore gas gathering lines; (3) the requirements for qualifying plastic pipe joiners; (4) the transportation of ethanol by pipeline; (5) the transportation of pipe; (6) the filing of offshore pipeline condition reports; (7) the calculation of pressure reductions for hazardous pipeline anomalies; and (8) the odorization of gas transmission lateral lines. PHMSA wishes to address these issues.

Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

Under the pipeline safety laws, 49 U.S.C. 60101 *et seq.,* the Secretary of Transportation must prescribe minimum safety standards for pipeline transportation and for pipeline facilities. The Secretary has delegated this authority to the PHMSA Administrator. 49 CFR 1.53(a). The proposed rule would effect changes in the regulations consistent with the protection of persons and property, while changing unduly burdensome or nonsensical requirements.

Description of Small Entities to Which the Proposed Rule Will Apply

In general, the proposed rule will apply to pipeline operators, some of which may qualify as a small business as defined in Section 601(3) of the Regulatory Flexibility Act. Some pipelines are operated by jurisdictions with a population of less than 50,000 people, and thus qualifying as small governmental jurisdictions.

Some portions of the rule apply to manufacturers of pipeline components, as well as the contractors constructing or repairing a pipeline. Many of these concerns may qualify as a small business concern.

Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Rule, and the Type of Professional Skills Necessary for Preparation of the Report or Record

The proposed rule does not directly impose any reporting or recordkeeping requirement. But the rule does create an obligation to perform leak surveys of Type B gathering lines. This sort of survey is currently required of transmission lines. This requirement is expected to apply only to small business entities, and not small governmental entities, because small jurisdictions typically operate distribution or transmission systems, to which the requirement will not apply. Professional inspectors will be needed to comply with this requirement, but the time required for compliance will vary greatly with each system.

The remainder of the proposed rule does not impose any compliance, recordkeeping, or reporting requirement; it does, however, affect the timing and substance of the reports that must be created and maintained under existing regulations. The rule proposes that operators notify PHMSA field offices 180 days prior to pipe manufacturing or construction activities. Currently existing regulations require operators to notify PHMSA 180 days in advance of operating a pipeline at a higher alternative MAOP. Because operators must currently provide PHMSA with notice of alternative design as early as practical, and prior to pipe manufacturing or construction activities, the proposed rule does not impose any additional reporting requirement.

Additionally, the proposed rule changes the reporting requirement for submissions to the National Pipeline Mapping System (NPMS). Submissions to the NPMS are mandatory as a result of the Pipeline Safety Improvement Act of 2002. At present, NPMS submissions are due every 12 months; the proposed rule would require establish due dates for NPMS submissions that coincide with the due dates for annual reports.

Identification, to the Extent Practicable, of all Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

PHMSA is unaware of any duplicative, overlapping, or conflicting federal rules. As noted below, PHMSA seeks comments and information about any such rules.

Description of Any Significant Alternatives to the Proposed Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities, Including Alternatives Considered

PHMSA is unaware of any alternatives which would produce smaller economic impacts on small entities while at the same time meeting the objectives of the relevant statutes. Several provisions of the proposed rule are specifically designed to eliminate confusion and potentially lower costs for regulated entities. For example, the proposed addition of 49 CFR 192.153(e) is designed to prevent regulated entities from purchasing pressure vessels that do not comply with § 192.505(b), but that do comply with ASME Boiler and Pressure Vessel Code Section VII, as required by § 192.165(b)(3). PHMSA seeks comments about lower-cost alternatives which would meet the stated objectives.

Questions for Comment to Assist Regulatory Flexibility analysis:

1. Please provide any data concerning the number of small entities which may be affected.

2. Please provide comment on any or all of the provisions in the proposed rule with regard to (a) the impact of the provisions, if any, and (b) any alternatives PHMSA should consider, paying specific attention to the effect of the rule on small entities.

3. Please describe ways in which the rule could be modified to reduce any costs or burdens for small entities.

4. Please identify all relevant Federal, state, local, or industry rules or policies that may duplicate, overlap, or conflict with the proposed rule and have not already been incorporated by reference.

Executive Order 13175

PHMSA has analyzed this proposed rule according to the principles and criteria in Executive Order 13175, ''Consultation and Coordination with Indian Tribal Governments.'' Because this proposed rule does not significantly or uniquely affect the communities of the Indian tribal governments or impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

Paperwork Reduction Act

This proposed rule imposes no new requirements for recordkeeping and reporting.

Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It would not result in costs of $100 million, adjusted for inflation, or more in any one year to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the proposed rule.

National Environmental Policy Act

The National Environmental Policy Act (42 U.S.C. 4321–4375) requires that Federal agencies analyze proposed actions to determine whether those actions will have a significant impact on the human environment. The Council on Environmental Quality regulations requires Federal agencies to conduct an environmental review considering (1) The need for the proposed action, (2) alternatives to the proposed action, (3) probable environmental impacts of the proposed action and alternatives, and (4) the agencies and persons consulted during the consideration process. 40 CFR 1508.9(b).

1. Purpose and Need

PHMSA is proposing to make non-substantive amendments and editorial changes to the pipeline safety regulations. That includes modifying the requirements for the performance of post-construction inspections; the conduct of leak surveys of Type B onshore gas gathering lines; the requirements for qualifying plastic pipe joiners; the regulation of ethanol; the transportation of pipe; the filing of offshore pipeline condition reports; the calculation of pressure reductions for hazardous liquid pipeline anomalies; and the odorization of gas transmission lateral lines.

2. Alternatives

In developing the proposed rule, PHMSA considered two alternatives:

(1) No action or

(2) Propose revisions to the pipeline safety regulations to incorporate the amendments previously and minor editorial changes.

Alternative 1: PHMSA has an obligation to ensure the safe and effective transportation of hazardous liquids and gases by pipeline. The changes proposed in this NPRM serve that purpose by clarifying the pipeline safety regulations and eliminating unduly burdensome requirements. A failure to undertake these actions would allow for the continued imposition of unnecessary compliance costs without increasing public safety. Accordingly, PHMSA rejected the no action alternative.

Alternative 2: PHMSA is proposing to make certain amendments, corrections and editorial changes to the pipeline safety regulations. These revisions would eliminate inconsistencies and respond to several petitions for rulemaking and recommendations from our stakeholders, thereby facilitating the safe and effective transportation of hazardous liquids and gases by pipeline. The changes proposed in this NPRM serve that purpose by clarifying the pipeline safety regulations and eliminating unduly burdensome requirements.

3. Analysis of Environmental Impacts

The Nation's pipelines are located throughout the United States in a variety of diverse environments; from offshore locations, to highly populated urban sites, to unpopulated rural areas. The pipeline infrastructure is a network of over 2.5 million miles of pipeline that move millions of gallons of hazardous liquids and over 55 billion cubic feet of natural gas daily. The biggest source of energy is petroleum, including oil and natural gas. Together, these commodities supply 65 percent of the energy in the United States.

The physical environment potentially affected by the proposed rule includes the airspace, water resources (*e.g.,* oceans, streams, lakes), cultural and historical resources (*e.g.,* properties listed on the National Register of Historic Places), biological and ecological resources (*e.g.,* coastal zones, wetlands, plant and animal species and their habitat, forests, grasslands, offshore marine ecosystems), and special ecological resources (*e.g.,* threatened and endangered plant and animal species and their habitat, national and State parklands, biological reserves, wild and scenic rivers) that exist directly adjacent to and within the vicinity of pipelines.

Because the pipelines subject to the proposed rule contain hazardous materials, resources within the physically affected environment, as well as public health and safety, may be affected by gas pipeline incidents such as spills and leaks. Incidents on pipelines can result in fires and explosions, resulting in damage to the local environment. In addition, since pipelines often contain gas streams laden with condensates and natural gas liquids, failures also result in spills of these liquids, which can cause environmental harm. Depending on the size of a spill or gas leak, and the nature of the impact zone, the environmental impacts could vary from property damage and environmental damage to injuries or, on rare occasions, fatalities.

The proposed amendments are not substantive in nature and would have little or no impact on the human environment. Thus it is possible that, on a national scale, the cumulative environmental damage from pipelines is reduced, or at a minimum unchanged.

For these reasons, PHMSA has concluded that neither of the alternatives discussed above would result in any significant impacts on the environment.

4. Consultations

Various industry associations and State regulatory agencies were consulted in the development of this proposed rulemaking.

5. Decision About the Degree of Environmental Impact

PHMSA has preliminarily determined that the selected alternative would not have a significant impact on the human environment and welcomes comment on any of these conclusions.

Executive Order 13132

PHMSA has analyzed this proposed rule according to Executive Order 13132 (''Federalism''). The proposed rule does not have a substantial direct effect on the states, the relationship between the national government and the states, or the distribution of power and responsibilities among the various levels of government. This proposed rule does not impose substantial direct compliance costs on state and local governments. This proposed rule does

not preempt state law for intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13211

This proposed rule is not a ''significant energy action'' under Executive Order 13211 (Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use). It is not likely to have a significant adverse effect on supply, distribution, or energy use. Further, the Office of Information and Regulatory Affairs has not designated this proposed rule as a significant energy action.

List of Subjects

49 CFR Part 191

Pipeline safety, Reporting, and recordkeeping requirements.

49 CFR Part192

Pipeline safety, Fire prevention, Security measures.

49 CFR Part 195

Ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 198

Grant programs, Formula, Pipeline safety.

In consideration of the foregoing, PHMSA is proposing to amend 49 CFR Chapter I as follows:

PART 191—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE; ANNUAL REPORTS, INCIDENT REPORTS, AND SAFETY-RELATED CONDITION REPORTS

1. The authority citation for Part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124, and 49 CFR 1.53.

2. In § 191.7, paragraph (a) is revised and paragraph (e) is added to read as follows:

§ 191.7 Report submission requirements.

(a) *General.* Except as provided in paragraphs (b) and (e) of this section, an operator must submit each report required by this part electronically to the Pipeline and Hazardous Materials Safety Administration at *http://opsweb.phmsa.dot.gov* unless an alternative reporting method is authorized in accordance with paragraph (d) of this section.

* * * * *

(e) *Exceptions.* An operator must provide the National Pipeline Mapping System data to the address identified in the NPMS Operator Standards manual available at *www.npms.phmsa.dot.gov* or by contacting the PHMSA Geospatial Information Systems Manager at (202) 366–4595.

§ 191.27 [Removed]

3. Section 191.27 is removed.

4. Section 191.29 is added to read as follows:

§ 191.29 National Pipeline Mapping System.

(a) (1) Each operator of a gas transmission pipeline or liquefied natural gas facility must provide the following geospatial data to PHMSA for that pipeline or facility:

(i) Geospatial data, attributes, metadata, and transmittal letter appropriate for use in the National Pipeline Mapping System. Acceptable formats and additional information are specified in the NPMS Operator Standards Manual available at *www.npms.phmsa.dot.gov* or by contacting the PHMSA Geographic Information Systems Manager at (202) 366–4595.

(ii) The name and address for the operator.

(iii) The name and contact information of a pipeline company employee who will serve as a contact for questions from the general public about the operator's NPMS data, which is displayed on a public Web site.

(2) This information must be submitted each year, not later than March 15, representing assets as of December 31 of the previous year. If no changes have occurred since the previous year's submission, comply with the guidance provided in the NPMS Operator Standards manual available at *www.npms.phmsa.dot.gov* or contact the PHMSA Geospatial Information Systems Manager at (202) 366–4595.

(b) [Reserved]

PART 192—TRANSPORTATION OF NATURAL AND OTHER GAS BY PIPELINE: MINIMUM FEDERAL SAFETY STANDARDS

5. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, 60116, 60118, and 60137; and 49 CFR 1.53.

6. In § 192.3, definitions for ''Welder'' and ''Welding Operator'' are added in appropriate alphabetical order to read as follows:

§ 192.3 Definitions.

* * * * *

Welder means a person who performs manual or semi-automatic welding.

Welding Operator means a person who operates machine or automatic welding equipment.

7. In § 192.7 paragraph (c)(2) amend the Table of referenced material by redesignating items D.(6) through D.(9) as D.(7) and D.(10) and adding a new D.(6) to read as follows:

§ 192.7 What documents are incorporated by reference partly or wholly in this part?

* * * * *

(c) * * *

(2) * * *

Source and name of referenced material 49 CFR reference

Source and name of referenced material	49 CFR reference
* * * * *	
D. * * *.	
(6) ASME/ANSI B36.10M, ''Standard for Welded and Seamless Wrought Steel Pipe''.	§ 192.279
* * * * *	

8. In § 192.9, paragraph (d)(7) is added to read as follows:

§ 192.9 What requirements apply to gathering lines?

* * * * *

(d) * * *

(7) Conduct leakage surveys in accordance with § 192.706 using leak detection equipment and fix hazardous leaks that are discovered in accordance with § 192.703(c).

* * * * *

9. In § 192.65, paragraph (a) is revised to read as follows.

§ 192.65 Transportation of pipe.

(a) *Railroad.* In a pipeline to be operated at a hoop stress of 20 percent or more of SMYS, an operator may not use pipe having an outer diameter to wall thickness of 70 to 1, or more, that is transported by railroad unless the transportation is performed in accordance with API RP 5LI.

* * * * *

10. In the Table in § 192.112, paragraph (e) is revised to read as follows:

§ 192.112 Additional design requirements for steel pipe using alternative maximum allowable operating pressure.

* * * * *

To address this design issue:	The pipeline segment must meet these additional requirements:
* *	* * * * *
(e) Mill hydrostatic test	(1) All pipe to be used in a new pipeline segment must be hydrostatically tested at the mill at a test pressure corresponding to a hoop stress of 95 percent SMYS for 10 seconds. (2) Pipe in operation prior to December 22, must have been hydrostatically tested at the mill at a test pressure corresponding to a hoop stress of 90 percent SMYS for 10 seconds. (3) Pipe in operation on or after November 17, 2008, but before [INSERT DATE OF FINAL RULE], must have been hydrostatically tested at the mill at a test pressure corresponding to a hoop stress of 95 percent SMYS for 10 seconds. The test pressure may include a combination of internal test pressure and the allowance for end loading stresses imposed by the pipe mill hydrostatic testing equipment as allowed by API Specification 5L, Appendix K (incorporated by reference, see § 192.7).
* *	* * * * *

11. In § 192.153, a new paragraph (e) is added to read as follows:

§ 192.153 Components fabricated by welding.

* * * * *

(e) A component having a design pressures established in accordance with paragraph (a) or paragraph (b) of this section and subject to the strength testing requirements of § 192.505(b) must be tested to at least 1.5 times the maximum allowable operating pressure.

12. In § 192.165, paragraph (b)(3) is revised to read as follows:

§ 192.165 Compressor stations: Liquid removal.

* * * * *

(b) * * *

(3) Be manufactured in accordance with section VIII of the ASME Boiler and Pressure Vessel Code (incorporated by reference, see § 192.7) and the additional requirements of § 192.153(e), except that liquid separators constructed of pipe and fittings without internal welding must be fabricated with a design factor of 0.4, or less.

13. In § 192.225, paragraph (a) is revised to read as follows:

§ 192.225 Welding procedures.

(a) Welding must be performed by a qualified welder or welding operator in accordance with welding procedures qualified in accordance with API 1104 (incorporated by reference, see § 192.7) or section IX of the ASME Boiler and Pressure Vessel Code ''Welding and Brazing Qualifications'' (incorporated by reference, see § 192.7) to produce welds which meet the requirements of this subpart. The quality of the test welds used to qualify welding procedures must be determined by destructive testing in accordance with the referenced welding standard(s).

* * * * *

14. Section 192.227 is revised to read as follows:

§ 192.227 Qualification of welders and welding operators.

(a) Except as provided in paragraph (b) of this section, each welder or welding operator must be qualified in accordance with section 6, 12, or 13 of API 1104 (incorporated by reference, see § 192.7) or section IX of the ASME Boiler and Pressure Vessel Code (incorporated by reference, see § 192.7). However, a welder or welding operator qualified under an earlier edition than the edition listed in § 192.7 of this part may weld but may not re-qualify under that earlier edition.

(b) A welder or welding operator may qualify to perform welding on pipe to be operated at a pressure that produces a hoop stress of less than 20 percent of SMYS by performing an acceptable test weld, for the process to be used, under the test set forth in section I of Appendix C of this part. Each welder or welding operator who is to make a welded service line connection to a main must first perform an acceptable test weld under section II of Appendix C of this part as a requirement of the qualifying test.

15. Section 192.229 is revised to read as follows:

§ 192.229 Limitations on welders and welding operators.

(a) No welder or welding operator whose qualification is based on nondestructive testing may weld compressor station pipe and components.

(b) A welder or welding operator may not weld with a particular welding process unless, within the preceding 6 calendar months, the welder or welding operator has engaged in welding with that process.

(c) A welder or welding operator qualified under § 192.227(a)—

(1) May not weld on pipe to be operated at a pressure that produces a hoop stress of 20 percent or more of SMYS unless within the preceding 6 calendar months the welder or welding operator has had one weld tested and found acceptable under section 6 or section 9 of API Standard 1104 (incorporated by reference, *see* § 192.7). Alternatively, a welder or welding operator may maintain an ongoing qualification status by performing welds tested and found acceptable under the above acceptance criteria at least twice each calendar year, but at intervals not exceeding 7½ months. A welder or welding operator qualified under an earlier edition of a standard than the edition listed in § 192.7 of this part may weld but may not re-qualify under that earlier edition; and

(2) May not weld on pipe to be operated at a pressure that produces a hoop stress of less than 20 percent of SMYS unless the welder or welding operator is tested in accordance with paragraph (c)(1) of this section or re-qualifies under paragraph (d)(1) or (d)(2) of this section.

(d) A welder or welding operator qualified under § 192.227(b) may not weld unless—

(1) Within the preceding 15 calendar months, but at least once each calendar year, the welder or welding operator has re-qualified under § 192.227(b); or

(2) Within the preceding 7½ calendar months, but at least twice each calendar year, the welder or welding operator has had—

(i) A production weld cut out, tested, and found acceptable in accordance with the qualifying test; or

(ii) Two sample welds tested and found acceptable in accordance with the test in section III of Appendix C of this part or a welder or welding operator who works only on service lines 2 inches (51 millimeters) or smaller in diameter.

16. In § 192.241, paragraph (c) is revised to read as follows:

§ 192.241 Inspection and test of welds.

* * * * *

(c) The acceptability of a weld that is nondestructively tested or visually

inspected is determined according to the standards in Section 9 or Appendix A of API Standard 1104, as applicable (incorporated by reference, see § 192.7).

17. In § 192.243, paragraph (e) is revised to read as follows:

§ 192.243 Nondestructive testing.

* * * * *

(e) Except for a welder or welding operator whose work is isolated from the principal welding activity, a sample of each welder's or welding operator's work for each day must be nondestructively tested, when nondestructive testing is required under § 192.241(b).

* * * * *

18. Section 192.279 is revised to read as follows:

§ 192.279 Copper Pipe.

Copper pipe may not be threaded except that copper pipe used for joining screw fittings or valves may be threaded if the wall thickness is equivalent to the comparable size of Schedule 40 or heavier wall pipe as listed in Table 1 of ASME B36.10M, Standard for Welded and Seamless Wrought Steel Pipe (incorporated by reference, see § 192.7).

19. In § 192.285, paragraph (c) is revised to read as follows:

§ 192.285 Plastic pipe: Qualifying persons to make joints.

* * * * *

(c) A person must be re-qualified under an applicable procedure if:

(1) During any calendar year (not exceeding 15 months) that person does not make any joints under that procedure; or

(2) Any production joint is found unacceptable by testing under § 192.513.

* * * * *

20. Section 192.305 is revised to read as follows:

§ 192.305 Inspection: General.

Each transmission line and main must be inspected to ensure that it is constructed in accordance with this subpart. An inspection may not be performed by a person who participated in the construction of that transmission line or main.

21. In Section 192.503, add new paragraph (e) to read as follows:

§ 192.503 General Requirements.

* * * * *

(e) If a component other than pipe is the only item being replaced or added to a pipeline, a strength test after installation is not required, if the manufacturer of the component certifies all of the below requirements and the operator maintains these certifications for the in service life of the component:

(1) The component was tested to at least the pressure required for the pipeline to which it is being added;

(2) The component was manufactured under a quality control system that ensures that each item manufactured is at least equal in strength to a prototype and that the prototype was tested to at least the pressure required for the pipeline to which it is being added; or

(3) The component carries a pressure rating established through applicable ASME/ANSI, MSS specifications, or by unit strength calculations as described in § 192.143.

§ 192.505 [Amended]

22. In Section 192.505, paragraph (d) is removed and paragraph (e) is re-designated as paragraph (d).

23. In § 192.620, paragraph (c)(1) and the first sentence of paragraph (c)(8) are revised to read as follows:

§ 192.620 Alternative maximum operating pressure for certain steel pipelines.

* * * * *

(c) * * *

(1) For pipelines already in service, notify the PHMSA pipeline safety regional office where the pipeline is in service of the intention to use the alternative pressure at least 180 days before operating at the alternative maximum allowable operating pressure. For new pipelines, notify the PHMSA pipeline safety regional office 180 days prior to start of pipe manufacturing and/or construction activities. An operator must also notify a State pipeline safety authority when the pipeline is located in a state where PHMSA has an interstate agent agreement or an intrastate pipeline is regulated by that state.

* * * * *

(8) A Class 1 and Class 2 location can be upgraded one class due to class changes per § 192.611(a). * * *

* * * * *

24. In § 192.625, paragraph (b)(3) is revised to read as follows:

§ 192.625 Odorization of Gas.

* * * * *

(b) * * *

(3) In the case of a lateral line which transports gas to a distribution center, at least 50 percent of the length of that line is in a Class 1 or Class 2 location as measured between the distribution center and the first upstream connection to the transmission line;

* * * * *

25. In § 192.925, the introductory text of paragraph (b) and the introductory text of (b)(2) are revised to read as follows:

§ 192.925 What are the requirements for using External Corrosion Direct Assessment (ECDA)?

* * * * *

(b) *General requirements.* An operator that uses direct assessment to assess the threat of external corrosion must follow the requirements in this section, in ASME/ANSI B31.8S (incorporated by reference, *see* § 192.7), section 6.4, and in NACE SP0502–2008 (incorporated by reference, *see* § 192.7). An operator must develop and implement a direct assessment plan that has procedures addressing pre-assessment, indirect inspection, direct examination, and post assessment. If the ECDA detects pipeline coating damage, the operator must also integrate the data from the ECDA with other information from the data integration (§ 192.917(b)) to evaluate the covered segment for the threat of third party damage and to address the threat as required by § 192.917(e)(1).

* * * * *

(2) *Indirect inspection.* In addition to the requirements in ASME/ANSI B31.8S section 6.4 and NACE SP0502–2008, section 4, the plan's procedures for indirect inspection of the ECDA regions must include—

* * * * *

PART 195—TRANSPORTATION OF HAZARDOUS LIQUIDS BY PIPELINE

26. The authority citation for Part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60116, 60118, and 60137; and 49 CFR 1.53.

27. In § 195.2, the definitions of ''alarm'', and ''hazardous liquid'' are revised and definitions for ''welder'' and ''welder operator'' are added in appropriate alphabetical order to read as follows:

§ 195.2 Definitions.

* * * * *

Alarm means an audible or visible means of indicating to the controller that equipment or processes are outside operator-defined, safety-related parameters.

* * * * *

Hazardous liquid means petroleum, petroleum products, anhydrous ammonia, or ethanol.

* * * * *

Welder means a person who performs manual or semi-automatic welding.

Welding operator means a person who operates machine or automatic welding equipment.

28. In § 195.3(c), paragraph entry B (9) is revised to read:

§ 195.3 Incorporation by reference.

* * * * *

(c) * * *

B. * * *.	
(9) ANSI/API Recommended Practice 651, ''Cathodic Protection of Aboveground Petroleum Storage Tanks'' (3rd edition, January 2007).	§§ 195.565, 195.573(d).

* * * * *

§ 195.57 [Removed]

29. Section 195.57 is removed.

30. In § 195.58, paragraph (a) is revised and a new paragraph (e) is added to read as follows:

§ 195.58 Report submission requirements.

(a) *General.* Except as provided in paragraphs (b) and (e) of this section, an operator must submit each report required by this part electronically to the Pipeline and Hazardous Materials Safety Administration at *http://opsweb.phmsa.dot.gov* unless an alternative reporting method is authorized in accordance with paragraph (d) of this section.

* * * * *

(e) *National Pipeline Mapping System (NPMS).* An operator must provide NPMS data to the address identified in the NPMS Operator Standards Manual available at *www.npms.phmsa.dot.gov* or by contacting the PHMSA Geographic Information Systems Manager at (202) 366–4595.

31. Section 195.61 is added to read as follows:

§ 195.61 National Pipeline Mapping System.

(a) Each operator of a hazardous liquid pipeline facility must provide the following geospatial data to PHMSA for that facility:

(1) Geospatial data, attributes, metadata and transmittal letter appropriate for use in the National Pipeline Mapping System. Acceptable formats and additional information are specified in the NPMS Operator Standards manual available at *www.npms.phmsa.dot.gov* or by contacting the PHMSA Geospatial Information Systems Manager at (202) 366–4595.

(2) The name and address for the operator.

(3) The name and contact information of a pipeline company employee who will serve as a contact for questions from the general public about the operator's NPMS data, which is displayed on a public Web site.

(b) This information must be submitted each year, not later than June 15, representing assets as of December 31 of the previous year. If no changes have occurred since the previous year's submission, see the information provided in the NPMS Operator Standards manual available at *www.npms.phmsa.dot.gov* or by contacting the PHMSA Geospatial Information Systems Manager at (202) 366–4595.

32. Section 195.204 is revised to read as follows:

§ 195.204 Inspection—general.

Inspection must be provided to ensure the installation of pipe or pipeline systems in accordance with the requirements of this subpart. No person may be used to perform inspections unless that person has been trained and is qualified in the phase of construction to be inspected. An inspection may not be performed by a person who participated in the installation of the pipe or pipeline systems.

33. In § 195.214, paragraph (a) is revised to read as follows:

§ 195.214 Welding Procedures.

(a) Welding must be performed by a qualified welder or welding operator in accordance with welding procedures qualified in accordance with API 1104 (incorporated by reference, see § 192.7) or section IX of the ASME Boiler and Pressure Vessel Code ''Welding and Brazing Qualifications'' (incorporated by reference, *see* § 192.7) to produce welds meeting the requirements of this subpart. The quality of the test welds used to qualify welding procedures must be determined by destructive testing in accordance with the referenced welding standard(s).

* * * * *

34. In § 195.222 the heading, paragraph (a), the introductory text of (b), and paragraph (b)(2) are revised to read as follows:

§ 195.222 Welding: Qualification of welders and welding operators.

(a) Each welder or welding operator must be qualified in accordance with sections 6, 12, or 13 of API 1104 (incorporated by reference, *see* § 195.3) or section IX of the ASME Boiler and Pressure Vessel Code, (incorporated by reference, *see* § 195.3) except that a welder or welding operator qualified under an earlier edition than an edition listed in § 195.3 may weld but may not re-qualify under that earlier edition.

(b) No welder or welding operator may weld with a welding process unless, within the preceding 6 calendar months, the welder or welding operator has—

* * * * *

(2) Had one welded tested and found acceptable under section 9 or Appendix A of API 1104 (incorporated by reference, *see* § 195.3).

35. In § 195.228, paragraph (b) is revised to read as follows:

§ 195.228 Welds and welding inspection: Standards of acceptability.

* * * * *

(b) The acceptability of a weld is determined according to the standards in section 9 or Appendix A of API 1104 (incorporated by reference, *see* § 195.3).

36. In § 195.234, paragraph (d) is revised to read as follows:

§ 195.234 Welds: Nondestructive testing.

* * * * *

(d) During construction, at least 10 percent of the girth welds made by each welder and welding operator during each welding day must be nondestructively tested over the entire circumference of the weld.

* * * * *

37. In § 195.307 paragraphs (c) and (d) are revised to read as follows:

§ 195.307 Pressure testing aboveground breakout tanks.

* * * * *

(c) For aboveground breakout tanks built to API Standard 650 (incorporated by reference, *see* § 195.3) and first placed in service after October 2, 2000, testing must be in accordance with Section 5.3.5 of API Standard 650 (incorporated by reference, see § 195.3).

(d) For aboveground atmospheric pressure breakout tanks constructed of carbon and low alloy steel, welded or riveted, and non-refrigerated and tanks built to API Standard 650 or its predecessor Standard 12 C that are returned to service after October 2, 2000, the necessity for the hydrostatic testing of repair, alteration, and reconstruction is covered in Section 12.3 of API Standard 653 (incorporated by reference, *see* § 195.3).

* * * * *

38. In § 195.428, paragraph (c) is revised to read as follows:

§ 195.428 Overpressure safety devices and overfill protection systems.

* * * * *

(c) Aboveground breakout tanks that are constructed or significantly altered according to API Standard 2510 after October 2, 2000, must have an overfill protection system installed according to section 7.1.2 of API Standard 2510. Other aboveground breakout tanks with 600 gallons (2271 liters) or more of storage capacity that are constructed or significantly altered after October 2, 2000, must have an overfill protection system installed according to API Recommended Practice 2350 (incorporated by reference, see § 195.3). However, an operator need not comply with any part of API Recommended Practice 2350 for a particular breakout tank if the operator describes in the manual required by § 195.402 why compliance with that part is not necessary for safety of the tank.

* * * * *

39. In § 195.452, paragraph (h)(4)(i) introductory text is revised to read as follows:

§ 195.452 Pipeline integrity management in high consequence areas.

* * * * *

(h) * * *

(4) * * * (i) *Immediate repair conditions.* An operator's evaluation and remediation schedule must provide for immediate repair conditions. To maintain safety, an operator must temporarily reduce the operating pressure or shut down the pipeline until the operator completes the repair of these conditions. An operator's evaluation and remediation schedule must provide for immediate repair conditions. To maintain safety, an operator must temporarily reduce the operating pressure or shut down the pipeline until the operator completes the repair of these conditions. An operator must calculate the temporary reduction in operating pressure using the formulas in paragraph (h)(4)(i)(B) of this section, if applicable, or when the formulas in paragraph (h)(4)(i)(B) of this section are not applicable by using a pressure reduction determination in accordance with § 195.106 and the appropriate remaining pipe wall thickness, or if all of these are unknown a minimum 20 percent or greater operating pressure reduction must be implemented until the anomaly is repaired. If the formula is not applicable to the type of anomaly or would produce a higher operating pressure, an operator must use an alternative acceptable method to calculate a reduced operating pressure. An operator must treat the following conditions as immediate repair conditions:

* * * * *

40. Section 195.571 is revised to read as follows:

§ 195.571 What criteria must I use to determine the adequacy of cathodic protection?

Cathodic protection required by this subpart must comply with one or more of the applicable criteria and other considerations for cathodic protection contained in paragraphs 6.2.2, 6.2.3, 6.2.4, 6.2.5 and 6.3 of NACE Standard RP 0169 (incorporated by reference, see § 195.3).

PART 198—REGULATIONS FOR GRANTS TO AID STATE PIPELINE SAFETY PROGRAMS

41. The authority citation for Part 198 continues to read as follows:

Authority: 49 U.S.C. 60105, 60106, 60114, and 49 CFR 1.53.

42. In § 198.13, a new paragraph (g) is added to read as follows:

§ 198.13 Grant allocation formula.

* * * * *

(g) Indirect cost rate reimbursement is limited to a maximum of 20% of Direct Costs of the Pipeline Safety Program.

Issued in Washington, DC, on November 19, 2011.

Jeffrey D. Wiese,

Associate Administrator for Pipeline Safety.

[FR Doc. 2011–29852 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register
Vol. 76, No. 229
Tuesday, November 29, 2011

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Community Eligibility Option Evaluation

AGENCY: Food and Nutrition Service (FNS), United States Department of Agriculture (USDA).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on this proposed information collection. This collection is a new information collection for the Community Eligibility Option Evaluation.

DATES: Written comments on this notice must be received by January 30, 2012.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions that were used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: John Endahl, Senior Program Analyst, Office of Research and Analysis, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 1004, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of John Endahl at (703) 305–2576 or via email to *john.endahl@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans, contact John Endahl, Senior Program Analyst, Office of Research and Analysis, Food and Nutrition Service/USDA, 3101 Park Center Drive, Room 1004, Alexandria, VA 22302; *Fax:* (703) 305–2576; *Email: john.endahl@fns.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Community Eligibility Option Evaluation.

OMB Number: 0584–NEW.

Expiration Date of Approval: Not yet determined.

Type of Information Collection Request: New information collection.

Abstract: Section 104(a) of the Healthy, Hunger Free Kids Act (the Act) of 2010 provides the Community Eligibility Option (the CE Option) for Local Educational Authorities (LEAs) and schools, as an alternative to household applications for Free or Reduced Price meals. Under the CE Option, families are not required to submit applications for free or reduced-price meals, and schools are required to provide free meals to all students. The Act sets a reimbursement formula based on the percentage of students directly certified or otherwise approved without application (the Identified Student Percentage or ISP). The potential benefits are that more students participate, meals are more nutritious, and LEAs may experience reductions in administrative burden and errors. In order to understand how the CE Option is implemented, incentives and barriers for LEAs and schools, as well as the impacts on LEAs, schools and children, Congress has mandated that FNS conduct an evaluation of the CE Option. The objectives of the study are:

- To estimate the number of eligible LEAs and schools that do not choose the CE Option;
- To assess the barriers to participation in the CE Option in non-participating but eligible LEAs and schools;
- To describe the LEAs and schools participating in the CE Option;
- To examine the impacts of the CE Option on (1) Program integrity, (2) availability of School Breakfast Program, (3) nutritional quality of meals, (4) program participation by students, (5) program administration, (6) foodservice revenues and costs; and
- To provide input to FNS deliberations about the key parameters for the CE Option: The multiplier for determining the percentage of meals reimbursed at the free rate (currently 1.6 times the ISP) and the threshold value of the ISP for determining eligibility to implement the option.

The activities to be undertaken subject to this notice include:

- Interviews with State Child Nutrition (CN) Directors, LEA Foodservice Directors, School Cafeteria Managers, and School Administrators
- Telephone Survey of State CN Directors
- Web based Implementation Survey of LEA Foodservice Directors (participating, eligible non-participating, and near eligible)
- Participation, Enrollment, Attendance, and Revenue Web Survey of LEA Foodservice Directors
- Pre-visit LEA Foodservice Director Questionnaire
- Pre-visit School Information Questionnaire (School Cafeteria Managers)
- Menu Survey
- Data abstraction from certification records
- Cashier observations
- Meal counts and claims review

Affected Public: State and Local Governments.

Type of Respondents: 51 State CN Directors, 1400 LEA Foodservice Directors, 353 School Cafeteria Managers, and 125 School Administrators.

Estimated Total Number of Respondents: 1,929.

Frequency of Response: Each instrument will be administered once to each respondent with two exceptions. State CN Directors in seven of eleven States will be interviewed twice over the course of the study (once annually);

State CN directors in four States will be interviewed once. School cafeteria managers will complete the Menu Survey on each day of the five-day site visit.

Estimated Annual Responses: 4,300.

Estimate of Time per Respondent and Annual Burden: Public reporting burden for this collection of information is estimated to average forty-five (45) minutes per State CN Director interview, ninety (90) minutes per LEA Foodservice Director interview, thirty (30) minutes per School Cafeteria Manager interview, and forty-five (45) minutes per School Administrator interview. Reporting burden is estimated at twenty (20) minutes per State CN Director telephone survey. Reporting burden is estimated at twenty-five (25) minutes per completed implementation web survey for the LEA Foodservice Directors and one hundred seventy (170) minutes per completed Participation, Enrollment, Attendance, and Revenue web survey for LEA Foodservice Directors. The reporting burden is estimated at ten (10) minutes per completed LEA Foodservice Director pre-visit questionnaire and fifteen (15) minutes per completed School Cafeteria Manager pre-visit questionnaire. Estimated reporting burden for Menu Surveys is forty-five (45) minutes per complete. The burden for the Data Abstraction Form/ Certification Record Review Form is estimated at thirty (30) minutes per completed form and the Meal Counting and Claiming Review Form is estimated at forty-five (45) minutes per completed form. Estimated burden for the Meal and Cashier Observation form is 10 minutes per completed form. The initial sample in the School Community Eligibility Study includes 51 State CN Directors (with 11 completing interviews and survey, plus 40 completing survey only), 1,400 LEA Foodservice Directors, 353 School Cafeteria Managers, and 125 School Administrators. We expect responses from 45 State CN Directors, 1,120 LEA Foodservice Directors, 318 School Cafeteria Managers, and 100 School Administrators. The annual reporting burden is estimated at 2,573.5 hours (see table below).

Data collection activity	Respondents		Estimated number of respondents	Frequency of response	Estimated total annual reponses	Average burden hours per response (in hours)	Total annual burden estimate (in hours)
Implementation Study Interviews (telephone).	State CN Director	Completed	11	1 to 2[1]	18	0.75	13.5
		Attempted	0	2	0	0.05	0
State Survey (telephone)	State CN Director	Completed	45	1	45	0.33	15.0
		Attempted	6	1	6	0.05	0.3
Implementation Web Survey	LEA Foodservice Directors	Completed	1,120	1	1,120	0.42	470.4
		Attempted	280	1	280	0.05	14.0
Participation, Enrollment, Attendance and Revenue Web Survey.	LEA Foodservice Directors	Completed	240	1	240	2.83	679.2
		Attempted	60	1	60	0.05	3.0
Pre-visit LEA Questionnaire	LEA Foodservice Directors	Completed	106	1	106	0.17	18.0
		Attempted	27	1	27	0.05	1.4
Interviews	LEA Foodservice Directors	Completed	106	1	106	1.50	159.0
		Attempted	27	1	27	0.05	1.4
	School Cafeteria Managers	Completed	318	1	318	0.5	159.0
		Attempted	35	1	35	0.05	1.8
	School Administrators	Completed	100	1	100	0.75	75.0
		Attempted	25	1	25	0.05	1.3
Data Abstraction Form/Certification Record Review Form.	LEA Foodservice Directors	Completed	106	3	318	0.50	159.0
		Attempted	0	1	0	0.05	0
Pre-visit School Information Questionnaire.	School Cafeteria Managers	Completed	156	1	156	0.25	39.0
		Attempted	39	1	39	0.05	2.0
Menu Survey Booklet	School Cafeteria Managers	Completed	156	5	780	0.75	585.0
		Attempted	39	1	39	0.05	2.0
Meal and Cashier Observation Form.	School Cafeteria Managers	Completed	156	1	156	0.17	26.5
		Attempted	39	1	39	0.05	2.0
Meal Counting and Claiming Review Form (School).	School Cafeteria Managers	Completed	156	1	156	0.75	117.0
		Attempted	39	1	39	0.05	2.0
Meal Counting and Claiming Review Form (LEA).	LEA Foodservice Directors	Completed	52	1	52	0.50	26.0
		Attempted	13	1	13	0.05	0.7
Total			3,457	–	4,300	0.60	2573.5

[1] Seven States will complete twice, four States will complete once.

Dated: November 22, 2011.

Jeffrey J. Tribiano,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 2011–30667 Filed 11–28–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—Assessment of the Contributions of an Interview to Supplemental Nutrition Assistance Program Eligibility and Benefit Determinations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on a proposed information collection. This proposed collection is for ''Assessment of the Contributions of an Interview to Supplemental Nutrition Assistance Program Eligibility and Benefit Determinations.'' The proposed collection will examine if there is a difference in payment accuracy, program access, administrative costs, and client satisfaction under two conditions: usual application procedures and the no-interview test condition.

DATES: Written comments must be received on or before January 30, 2012.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; and (c) ways to minimize the burden of the collection of information on those who are to respond, including use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent to: Steven Carlson, Director, Office of Research and Analysis, U.S. Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 1014, Alexandria, VA 22302. Comments may also be submitted via fax to the attention of Steven Carlson at (703) 305–2576 or via email to *Steve.Carlson@fns.usda.gov.* Comments will also be accepted through the Federal eRulemaking Portal. Go to *http://www.regulations.gov,* and follow the online instructions for submitting comments electronically.

All written comments will be open for public inspection at the office of the Food and Nutrition Service during regular business hours (8:30 a.m. to 5 p.m. Monday through Friday) at 3101 Park Center Drive, Room 1014, Alexandria, Virginia 22302.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will be a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this information collection should be directed to Steven Carlson at (703) 305–2017.

Abstract: The Supplemental Nutrition Assistance Program (SNAP) is a critical source of support for many low-income families and individuals. In recent years, States have changed the way clients enroll in SNAP. A central feature of the changes is a waiver that allows States to conduct the in-person eligibility interview over the telephone. Many States have implemented this interview waiver. Some states have expressed interest in exploring alternative certification approaches that do not require conducting any interviews in the SNAP eligibility determination process. However, there is little data available to assess the impact of eliminating a certification interview on client access, customer service, and program integrity. This study will focus on the contributions of interviews to the determination of SNAP eligibility and benefits. It will examine if there is a difference in payment accuracy, program access, administrative costs, and client satisfaction under two conditions: usual application procedures and the no-interview test condition.

Three states—North Carolina, Oregon, and Utah—applied and were selected to conduct this study. North Carolina and Oregon will be conducting the study in selected demonstration sites and Utah will randomly select clients across the entire state. All three states will limit the size of the no-interview test condition to 20 percent of their caseload. Each state will identify a comparison site(s) that represents its current application procedures. These comparison sites will be similar to the no-interview demonstration sites in terms of population characteristics, population density, SNAP participation trends, SNAP advocacy and outreach, economic indicators, and other factors. Project findings will help policymakers understand the contributions of an interview for eligibility and benefit determination.

The project has eight research objectives: (1) Describe the eligibility determination procedures under the current system and the demonstration condition in each State; (2) describe any modernization activities in each State that complement the waiver to make its application most effective; (3) describe the process for implementing the waivers; (4) describe the responses of clients to the no-interview condition; (5) describe the responses of SNAP staff to the no-interview condition; (6) describe the responses of community partners and other stakeholders to the no-interview condition; (7) document the impact of the no-interview condition; and (8) document the main take-away points from the study to inform FNS.

Data will be collected from four sources:

- *First,* site visits will be conducted to observe demonstration and comparison procedures and to interview professional staff who work at SNAP offices or related not-for-profit organizations.
- *Second,* each State will conduct Quality Control (QC)-like reviews both before and after implementing the demonstration projects. The States will select 225 to 300 clients to interview from the demonstration site during each round of reviews. The State will use the same procedures to interview clients as it uses to conduct its Federal QC reviews. These data will be used to measure the accuracy of the eligibility and benefit determinations under both the no-interview and the States' regular interview procedures.
- *Third,* clients will be surveyed by telephone about their recent application/recertification experiences under the interview conditions to provide their perspectives on the process. Clients will receive an advance letter about the survey, including a $2 pre-interview cash incentive. The telephone interview will last five to seven minutes. Clients will also receive a $10 gift card to a local store after completing the survey.
- *Finally,* a total of four focus groups will be conducted in each State—two focus groups in the no-interview sites and two focus groups in the interview sites. These focus groups will be conducted with ''procedural denials''—individuals who submit a SNAP application but are denied SNAP benefits because they fail to complete the subsequent stages of the application

process. Focus group members will be selected using State SNAP administrative data for recent applicants. Focus group discussions will last approximately 90 minutes. All focus group participants will receive a $30 stipend for participation and a $6 stipend for transportation or parking. These qualitative data will provide a better understanding of reasons applicants do not complete the certification or recertification process.

Tailored protocols will be used for the survey and focus groups. Interview and focus group questions will be as simple and respondent-friendly as possible. Responses to all questions will be voluntary. The contractor will take the following steps to treat the data provided in a confidential manner: (1) No data will be released in a form that identifies individual respondents by name and (2) information collected through interviews will be combined across other respondents in the same category and reported only in aggregate form. Respondents will be notified of these confidentiality measures during data collection.

Other data collection will include observations of local offices and interviews with staff at State and local SNAP offices and at not-for-profit organizations. The study will use State administrative data to examine trends in participation and benefit amounts and to monitor demonstration costs and other performance issues.

Affected Public: Members of the public affected by the data collection include State and local government, individuals and households, and not-for-profit institutions. Respondent groups identified include (1) SNAP staff at the State, district/county, and local levels; (2) SNAP applicants and participants; and (3) not-for-profit organizations that work closely with SNAP applicants and participants.

Estimated Number of Respondents: The study will collect data from a total of 2,991 respondents across all States. This number represents the sum of 12 State-level SNAP staff interviews; 18 district/county SNAP staff interviews; 60 local office SNAP staff interviews; 9 interviews with staff at not-for-profit organizations; 2,772 SNAP clients; and 120 procedural denials.

Estimated Number of Responses per Respondent: Each client survey and focus group respondent will require one response. Each interview respondent for State and local agency and not-for-profit organization staff will require two responses.

Estimated Time per Response: For all interviews of State SNAP staff, district/county SNAP staff, local office SNAP staff, and not-for-profit partner staff, the burden estimate is 1.5 hours, which includes the respondents' time to prepare for and complete the interview. For client survey respondents, including the respondents' time to read an advance letter and complete the survey, the burden estimate is 0.1667 hours (10 minutes). For client survey refusers, the burden estimate is 0.0833 hours (5 minutes), including time to read the advance letter and field a call attempting the survey. For all participating members in the focus groups, the burden estimate is 1.667 hours (100 minutes). This includes the respondents' time to be screened, receive a reminder call, read a reminder letter, and participate in the group. For all who decline to participate in the focus groups, including the respondents' time to be screened, the burden estimate is 0.0833 hours (5 minutes) (see the following table).

Estimated Total Annual Burden on Respondents and Non-responders: Staff from State-, district-, county-, and local-level SNAP offices, as well as staff from not-for-profit organizations, will be interviewed twice in the 15-month field period of this study. SNAP clients and procedural denials will be interviewed or participate in a focus group only once. This sums to a total of 1,072 hours, including State SNAP staff, 36 hours; district/county SNAP staff, 54 hours; local office SNAP staff, 180 hours; not-for-profit organization staff, 27 hours; SNAP clients participating in the survey, 462 hours; and SNAP client survey non-responders, 72.9 hours.

The number of survey non-responders is based on the assumption that we will start with a sample of 3,647 clients, of which 95 percent will be eligible for the survey, and will achieve an 80 percent response rate. The burden for clients with procedural denials participating in the focus groups is estimated at 200 hours, and for respondents who elect not to participate in the focus groups (refusers), the estimated total burden is 40 hours. The number of refusers is based on the assumption that in order to have 120 respondents ultimately attend the focus groups, 300 people will need to be recruited. In order to recruit 300 people, twice as many, or 600, will need to be contacted initially.

Affected public	Respondent type	Estimated number of respondents	Responses annually per respondent	Total annual responses	Estimated average number of hours per response	Estimated total hours
State and Local Agencies	State SNAP staff	12	2	24	1.5	36
	District/County SNAP staff	18	2	36	1.5	54
	Local office SNAP staff	60	2	120	1.5	180
Not-for-Profit Organizations.	Community partner organization staff.	9	2	18	1.5	27
Individuals and Households.	Active SNAP participants (client survey).[a]	2,772	1	2,772	0.1667 (10 minutes).	462.1
	Active SNAP participants (client survey non-responders).[b]	875	1	875	0.0833 (5 minutes).	72.9
	SNAP procedural denials (focus group participants).[c]	120	1	120	1.667 (100 minutes).	200
	SNAP procedural denials (focus group non-responders).[d]	480	1	480	0.0833 (5 minutes)	40
Total		4,346		4,445		1,072

[a] Client survey respondents will receive an advance letter before the interview.
[b] Client survey non-responders will receive an advance letter before fielding a call attempting the interview.
[c] Focus group members will participate in a brief screening call or interview, participate in the focus group, and receive a reminder call and letter before the focus group.
[d] Focus group refusers will participate in a brief screening call or interview.

Dated: November 21, 2011.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2011–30674 Filed 11–28–11; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Application for an Export Trade Certificate of Review.

OMB Control Number: 0625–0125.

Form Number(s): ITA–4093P.

Type of Request: Regular submission (extension of a currently approved information collection).

Burden Hours: 348.

Number of Respondents: 12.

Average Hours Per Response: 32.

Needs and Uses: An Export Trade Certificate of Review provides the certificate holder and its members with limited antitrust preclearance for specified export-related activities. Application for an Export Trade Certificate of Review is voluntary. The information to be collected is found at 15 CFR part 325—Export Trade Certificates of Review. The collection of information is necessary for the Departments of Commerce and Justice to conduct an antitrust analysis, in order to determine whether the applicant's proposed export-related conduct meets the standards in Section 303(a) of the Act. The collection of information constitutes the essential basis of the statutory determinations to be made by the Secretary of Commerce and the Attorney General. To maintain Certificate of Review, an annual report must be filed.

Affected Public: Business or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Wendy Liberante, (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, Fax number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov*.

Dated: November 22, 2011

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–30606 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration (ITA).

Title: Trade Fair Certification Program.

OMB Control Number: 0625–0130.

Form Number(s): ITA–4100P.

Type of Request: Regular submission (extension/revision of a currently approved information collection).

Burden Hours: 360.

Number of Respondents: 120.

Average Hours per Response: 3.

Needs and Uses: The Trade Fair Certification (TFC) Program provides endorsement and support for private trade show organizers, trade associations, U.S. agents of foreign fair authorities, and other entities to organize and manage a U.S. Pavilion at a foreign trade show. The form is used to apply for certification of their ability to perform this task. The TFC Program uses information from the form to evaluate if both the show and the organizer meet the Department's high standards such as recruiting, delivering show services, attracting small and medium-sized firms, booth pricing, and being an appropriate marketing venue for U.S. firms. Potential exhibitors look to trade fair certification to ensure they are participating in a viable show with a reliable organizer. The form also includes information on where to apply, procedures and commitment by the applicant to abide by the terms set forth for program participation.

The TFC Program proposes to revise the form by adding three questions below with corresponding number, and information on a trade certification price increase.

16. Is the overall show audited by an official or professional trade show authority or an accredited media audit organization? (For instance, in the U.S., this would be an audit firm recognized by the Exhibition and Event Industry Audit Commission.). If yes, please indicate which one(s) or include a copy of the last report.

24. Indicate what Intellectual Property Rights (IPR) protection and/or IPR policies and procedures are available from the show owner/organizer for exhibitors at the show.

25. Provide a copy of the rules/regulations for U.S. exhibitors and a copy of the show owner/organizer rules/regulations for all exhibitors. If you are both the U.S. pavilion organizer and the show owner/organizer, one set of rules/regulations for all exhibitors is sufficient.

26. In April of 2008, the price of Trade Certification was increased from $1,750 to $2,000 to cover the increasing costs associated with Commercial Service support of certified trade events.

The justification for the additional questions is to ensure the U.S. Department of Commerce is providing assistance to shows that position U.S. companies with their plans for international expansion. Seeks clarity on rules regarding the event and ensure IPR issues are addressed. The price adjustment is to cover the increase in delivering the service. These revisions are not expected to increase response time, it is expected that respondents will a

Affected Public: Business or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Required to retain or obtain a benefit.

OMB Desk Officer: Wendy Liberante, Phone (202) 395–3647.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*.)

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Wendy Liberante, OMB Desk Officer, FAX number (202) 395–5167 or via the Internet at *Wendy_L._Liberante@omb.eop.gov.*

Dated: November 22, 2011

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–30573 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Economic Development Administration

The National Advisory Council on Innovation and Entrepreneurship: Meeting of the National Advisory Council on Innovation and Entrepreneurship

AGENCY: U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The National Advisory Council on Innovation and Entrepreneurship will hold a meeting on Tuesday, December 13, 2011. The open meeting will be conducted from 10 a.m. to 12 p.m., and will be open to the public via a listen-only conference number (888) 989–4718, passcode NACIE. The Council was chartered on November 10, 2009, to advise the Secretary of Commerce on matters relating to innovation and entrepreneurship in the United States.

DATES: December 13, 2011.

Time: 10 a.m.–12 p.m. (EST).

ADDRESSES: The meeting will be held in the Herbert C. Hoover Building, 1401 Constitution Avenue NW., Washington, DC 20230–0002. For audio participation, please specify any requests for reasonable accommodation of auxiliary aids at least five business days in advance of the meeting. Last minute requests will be accepted, but may be impossible to fill.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is for Secretary Bryson to discuss NACIE's earlier work, review its priorities, and offer his charge to the members. Specific topics for discussion include NACIE's current focus on issues related to implementing the America Invents Act and supporting development of regional economic frameworks. The agenda may change to accommodate NACIE business. The final agenda will be posted on the NACIE Web site at *http://www.eda.gov/nacie.* Any member of the public may submit pertinent written comments concerning the Council's affairs at any time before and after the meeting. Comments may be submitted to O. Felix Obi at the contact information indicated below. Copies of meeting minutes will be available within 90 days of the meeting at *http://www.eda.gov/NACIE*

FOR FURTHER INFORMATION CONTACT: O. Felix Obi, Office of Innovation and Entrepreneurship, Room 7019, 1401 Constitution Avenue NW., Washington, DC, 20230, telephone: (202) 482–3688, email: *fobi@eda.doc.gov.* Please reference, ''NACIE December 13, 2011'' in the subject line of your email.

Dated: November 23, 2011.

Paul J. Corson,

Office of Innovation and Entrepreneurship, U.S. Department of Commerce.

[FR Doc. 2011–30750 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–03–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

Foreign-Trade Zone 183—Austin, Tx; Site Renumbering Notice

Foreign-Trade Zone 183 was approved by the Foreign-Trade Zones Board on December 23, 1991 (Board Order 550), and expanded on March 16, 1998 (Board Order 964), on July 10, 1998 (Board Order 994), on April 7, 1999 (Board Order 1035), on March 15, 2001 (Board Order 1143), and on January 27, 2005 (Board Order 1366).

FTZ 183 currently consists of 8 ''sites'' totaling some 2,818 acres in the Austin area. The current updates does not alter the physical boundaries that have previously been approved, but instead involves an administrative renumbering of the existing sites (with the exception of Sites 2, 4, 6, 7 and 8) to separate unrelated, non-contiguous sites for record-keeping purposes.

Under this revision, the site list for FTZ 183 will be as follows: *Site 1* (33 acres)—Interchange w/n the Austin Enterprise Zone, located at Bolm Road and Gardner Road, Austin; *Site 2* (50 acres)—Balcones Research site located in north central Austin at the intersection of Burnett Road and Longhorn Boulevard; *Site 3* (449.9 acres)—Corridor Park II (Dell), Dell Way/IH 35, Round Rock; *Site 4* (47 acres)—Cedar Park site, some 8 miles northwest of the Austin city limits, in Williamson County; *Site 5* (100 acres)—Borroughs, Chandler Road/Cypress Boulevard, Round Rock; *Site 6* (246 acres)—Georgetown site, located along I–35 and U.S. 81, south of downtown Georgetown; *Site 7* (40 acres)—San Marcos site, located within the San Marcos Municipal Airport facility in eastern San Marcos, adjacent to State Highway 21, on the Hays County/Caldwell County line; *Site 8* (200 acres)—MET Center industrial park located between U.S. Highway 183 South and State Highway 71 East in southeast Austin, some 5 miles northwest of the Austin Bergstrom International Airport; *Site 9* (56.4 acres)—Data Products/Nature Conservancy, Montopolis Drive/East Riverside Drive, Austin; *Site 10* (22.6 acres)—Ben White Business Park, South Industrial Drive/Business Center Drive, Austin; *Site 11* (64.5 acres)—Walnut Business Park, US 290/US 183, Austin; *Site 12* (100 acres)—Harris Branch, Harris Branch Parkway/Parmer Lane, Austin; *Site 13* (15 acres)—Hill Partners w/n Global Business Park, Rutherford Lane/Cameron Road, Austin; *Site 14* (91 acres)—Corridor Park I (Wayne Dresser), Jarrett Way, Round Rock; *Site 15* (108.5 acres)—Vista Business Park/Bratton, Wells Port Drive/Grand Avenue Parkway, Round Rock; *Site 16* (72.6 acres)—North Park, Grand Avenue Parkway/IH 35, Round Rock; *Site 17* (40 acres)—Harvard, Glenn Drive, Round Rock; *Site 18* (574 acres)—Parmer Lane, E. Parmer Lane/McCallen Pass, Round Rock; *Site 19* (217.9 acres)—Tech Ridge, McCallen Pass/Howard Lane, Round Rock; *Site 20* (58.5 acres)—Wells Branch Industrial Park, Howard Lane/McNiel-Meriltown Road, Round Rock; *Site 21* (45.5 acres)—Metric Center, Metric Boulevard, Round Rock; *Site 22* (38.5 acres)—Crystal Park, E. Old Settlers Boulevard, Round Rock; *Site 23* (116.3 acres)—Westinghouse, Westinghouse Drive/IH 35, Round Rock; and, *Site 24* (30 acres)—Coop Smith & Park Central, County Road 116/111, Round Rock.

For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: November 22, 2011.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2011–30758 Filed 11–28–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–824, A–570–828, A–823–805]

Silicomanganese From Brazil, the People's Republic of China, and Ukraine: Final Results of the Expedited Third Sunset Reviews of the Antidumping Duty Orders

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On August 1, 2011, the Department of Commerce (''Department'') initiated the third sunset reviews of the antidumping duty orders on silicomanganese from Brazil,

the People's Republic of China (''PRC''), and Ukraine [1] pursuant to section 751(c) of the Tariff Act of 1930, as amended (''Act''). The Department received a notice of intent to participate in all three reviews from the domestic interested party, Eramet Marietta, Inc. (''Eramet''), within the time specified in 19 CFR 351.218(d)(1)(i).[2] On August 31, 2011, the Department received substantive responses from Eramet. Based on the receipt of the substantive responses filed by the domestic interested party within the 30-day deadline as specified by 19 CFR 351.218(d)(3)(i) and the lack of response from any respondent interested party, the Department conducted expedited sunset reviews of the antidumping duty orders pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2). As a result of these sunset reviews, the Department finds that revocation of the antidumping duty orders would likely lead to continuation or recurrence of dumping, at the levels indicated in the ''Final Results of Sunset Reviews'' section of this notice.

DATES: *Effective Date:* November 29, 2011.

FOR FURTHER INFORMATION CONTACT: Erin Begnal; AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; *telephone:* (202) 482–1442.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2011, the Department initiated sunset reviews of the orders on silicomanganese from Brazil, the PRC, and Ukraine pursuant to section 751(c) of the Act. *See Initiation of Five-year (''Sunset'') Review,* 76 FR 45778 (August 1, 2011). On August 31, 2011, the Department received substantive responses from Eramet, pursuant to 19 CFR 351.218(d)(3)(i). In accordance with 19 CFR 351.218(d)(1)(ii)(A), Eramet claimed interested party status under section 771(9)(C) of the Act as a producer of the domestic like product. In its substantive responses, Eramet indicated that Elkem Metals Company (''Elkem'') was the petitioner in the original investigation but that since Eramet purchased Elkem's silicomanganese operations in 1999, it has participated actively in all administrative reviews and sunset reviews. The Department did not receive a substantive response from any respondent interested party in these sunset reviews. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted expedited sunset reviews of the antidumping duty orders.

Scope of the Orders

The merchandise covered by the orders is silicomanganese. Silicomanganese, which is sometimes called ferrosilicon manganese, is a ferroalloy composed principally of manganese, silicon and iron, and normally contains much smaller proportions of minor elements, such as carbon, phosphorus, and sulfur. Silicomanganese generally contains by weight not less than 4 percent iron, more than 30 percent manganese, more than 8 percent silicon, and not more than 3 percent phosphorous. All compositions, forms, and sizes of silicomanganese are included within the scope of the order, including silicomanganese slag, fines, and briquettes. Silicomanganese is used primarily in steel production as a source of both silicon and manganese.

Silicomanganese is currently classifiable under subheading 7202.30.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Some silicomanganese may also currently be classifiable under HTSUS subheading 7202.99.5040. The orders cover all silicomanganese, regardless of its tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the orders remain dispositive.

Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews is addressed in the accompanying Issues and Decision Memorandum (''I&D Memo''), which is hereby adopted by this notice. *See* the Department's memorandum entitled, ''Issues and Decision Memorandum for the Final Results in the Expedited Sunset Review of the Antidumping Duty Order on Silicomanganese from Brazil, the People's Republic of China, and Ukraine'' concurrently dated with this notice. The issues discussed in the accompanying I&D Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the dumping margins likely to prevail if the antidumping orders were revoked. Parties can find a complete discussion of all issues raised in this full sunset review and the corresponding recommendation in this public memorandum which is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Services System (''IA ACCESS''). Access to IA ACCESS is available in the Central Records Unit room 7046 of the main Commerce building. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at *http://ia.ita.doc.gov/frn.* The signed Decision Memorandum and the electronic versions of the Decision Memorandum are identical in content.

Final Results of Sunset Reviews

The Department determines that revocation of the antidumping duty orders on silicomanganese from Brazil, the PRC, and Ukraine would likely lead to continuation or recurrence of dumping. The Department also determines that the dumping margins likely to prevail if the orders were revoked are as follows:

MANUFACTURERS/EXPORTERS/PRODUCERS WEIGHTED-AVERAGE MARGIN

[Percent]

Brazil	
RDM/CPFL	64.93
All Others	17.60
The PRC	
All Manufacturers/Producers/Exporters	150.00
Ukraine	
All Manufacturers/Producers/Exporters	163.00

Notification Regarding Administrative Protective Order

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or

[1] *See Notice of Antidumping Duty Order: Silicomanganese From Brazil,* 59 FR 66003 (December 22, 1994), *Notice of Antidumping Duty Order: Silicomanganese From the People's Republic of China (PRC),* 59 FR 66003 (December 22, 1994), and *Suspension Agreement on Silicomanganese From Ukraine; Termination of Suspension Agreement and Notice of Antidumping Duty Order,* 66 FR 43838 (August 21, 2001).

[2] On August 19, 2011, the Department received a notice of intent to participate from Felman Production Inc. (''Felman''), a producer of the domestic like product. On August 22, 2011, Felman requested an extension of the deadline to submit its notice of intent to participate, as the deadline for domestic interested parties to submit notices of intent to participate in the sunset reviews was August 16, 2011, pursuant to 19 CFR 351.218(d)(l)(i) (''the deadline for filing a 'Notice of Intent' to participate by domestic interested parties in a sunset review is 'no later than 15 days after the date of publication of the initiation notice.' ''). In light of the compressed timelines for conducting the sunset review under section 751(c) of the Act, and 19 CFR 351.218(d), the Department denied Felman's request for an extension.

conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing these results and notice in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: November 22, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–30767 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–975]

Galvanized Steel Wire From the People's Republic of China: Amended Preliminary Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 29, 2011.

SUMMARY: On November 4, 2011, the Department of Commerce (''Department'') published the preliminary determination of sales at less than fair value in the antidumping investigation of galvanized steel wire from the People's Republic of China (''PRC'').[1] We are amending our *Preliminary Determination* to correct certain ministerial errors with respect to the antidumping duty margin calculation for the Baozhang entity.[2] The corrections to the Baozhang entity's margin also affect the margin assigned to companies receiving a separate rate.

FOR FURTHER INFORMATION CONTACT: Katie Marksberry, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–7906.

SUPPLEMENTARY INFORMATION: On November 4, 2011, Petitioners[3] filed a timely allegation of a ministerial error contained in the Department's *Preliminary Determination*.[4]

After reviewing the allegation, we have determined that the *Preliminary Determination* included a significant ministerial error. Therefore, in accordance with 19 CFR 351.224(e), we have made a change, as described below, to the *Preliminary Determination.*

Period of Investigation

The period of investigation (''POI'') is July 1, 2010, through December 31, 2010. This period corresponds to the two most recent fiscal quarters prior to the month of the filing of the petition (March 31, 2011).[5]

Scope of Investigation

The scope of this investigation covers galvanized steel wire which is a cold-drawn carbon quality steel product in coils, of solid, circular cross section with an actual diameter of 0.5842 mm (0.0230 inch) or more, plated or coated with zinc (whether by hot-dipping or electroplating).

Steel products to be included in the scope of this investigation, regardless of Harmonized Tariff Schedule of the United States (''HTSUS'') definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is two percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

—1.80 percent of manganese, or
—1.50 percent of silicon, or
—1.00 percent of copper, or
—0.50 percent of aluminum, or
—1.25 percent of chromium, or
—0.30 percent of cobalt, or
—0.40 percent of lead, or
—1.25 percent of nickel, or
—0.30 percent of tungsten, or
—0.02 percent of boron, or
—0.10 percent of molybdenum, or
—0.10 percent of niobium, or
—0.41 percent of titanium, or
—0.15 percent of vanadium, or
—0.15 percent of zirconium.

Specifically excluded from the scope of this investigation is galvanized steel wire in coils of 15 feet or less which is pre-packed in individual retail packages. The products subject to this investigation are currently classified in subheadings 7217.20.30 and 7217.20.45 of the HTSUS which cover galvanized wire of all diameters and all carbon content. Galvanized wire is reported under statistical reporting numbers 7217.20.3000, 7217.20.4510, 7217.20.4520, 7217.20.4530, 7217.20.4540, 7217.20.4550, 7217.20.4560, 7217.20.4570, and 7217.20.4580. These products may also enter under HTSUS subheadings 7229.20.0015, 7229.20.0090, 7229.90.5008, 7229.90.5016, 7229.90.5031, and 7229.90.5051. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise is dispositive.

Significant Ministerial Error

Ministerial errors are defined in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' 19 CFR 351.224(e) provides that the Department ''will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination.'' A significant ministerial error is defined as a ministerial error, the correction of which, singly or in combination with other errors, would result in: (1) A change of at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero or *de minimis* and a weighted-average dumping margin of greater than *de minimis* or vice versa.[6]

Ministerial Error Allegation

Truck Freight for Baozhang

Petitioners argue that the Department incorrectly applied the surrogate value for truck freight on a per-kilogram basis, rather than on a per-metric ton basis, because the Baozhang entity reported its factors of production (''FOPs'') on a per-metric ton basis and the Department calculated the Baozhang entity's margin on a per-metric ton basis. Petitioners request that the Department correct this error by converting the surrogate value for truck freight to a per-metric ton basis. Further, Petitioners contend that correcting this error would result in a significantly higher weight-averaged

[1] *See Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Galvanized Steel Wire from the People's Republic of China,* 76 FR 68407 (November 4, 2011) (''*Preliminary Determination''*).

[2] The Baozhang entity consists of Shanghai Bao Zhang Industry Co., Ltd. and Anhui Bao Zhang Metal Products Co., Ltd. (''Anhui Baozhang''), *See Preliminary Determination* at 68413.

[3] Davis Wire Corporation, Johnstown Wire Technologies, Inc., Mid-South Wire Company, Inc., National Standard, LLC and Oklahoma Steel & Wire Company, Inc. (collectively, ''Petitioners'').

[4] *See* Letter to the Department from Petitioners Re: Antidumping Investigation of Galvanized Steel Wire from the People's Republic of China—Petitioners' Ministerial Error Comment Regarding Preliminary Determination for Bao Zhang Companies, dated November 4, 2011.

[5] *See* 19 CFR 351.204(b)(1).

[6] *See* 19 CFR 351.224(g).

dumping margin for the Baozhang entity.

We agree that the Department did not apply the correct unit of measure to the truck freight surrogate value. Moreover, we determine that this error is a ''significant ministerial error'' as defined in 19 CFR 351.224(g)(1). Accordingly, we have corrected the error.[7] As a result of correcting the above error in the Baozhang entity's margin, the margin for the companies granted separate-rate status must also be revised because the margin for those companies was partially derived from the Baozhang entity's margin.[8] The rate for the PRC-wide entity does not change.

Amended Preliminary Determination

As a result of the correction of the ministerial error, the weighted-average dumping margins for the Baozhang entity and the separate rate companies are as follows:

GALVANIZED STEEL WIRE FROM THE PRC

Exporter	Producer	Weighted-average margin (percent)
Tianjin Honbase Machinery Manufactory Co., Ltd.	Tianjin Honbase Machinery Manufactory Co., Ltd	131.84
Anhui Bao Zhang Metal Products Co., Ltd.	Anhui Bao Zhang Metal Products Co., Ltd	99.87
Shanghai Bao Zhang Industry Co., Ltd	Shanghai Bao Zhang Industry Co., Ltd	99.87
Shanghai Bao Zhang Industry Co., Ltd	Anhui Bao Zhang Metal Products Co., Ltd	99.87
Anhui Bao Zhang Metal Products Co., Ltd.	Shanghai Bao Zhang Industry Co., Ltd	99.87
Shijiazhuang Kingway Metal Products Co., Ltd.	Shijiazhuang Kingway Metal Products Co., Ltd	129.11
Shanxi Yuci Broad Wire Products Co., Ltd.	Shanxi Yuci Broad Wire Products Co., Ltd	129.11
Huanghua Jinhai Hardware Products Co., Ltd.	Huanghua Jinhai Hardware Products Co., Ltd	129.11
Huanghua Jinhai Import & Export Trading Co., Ltd.	Huanghua Jinhai Hardware Products Co., Ltd	129.11
Guizhou Wire Rope Incorporated Company.	Guizhou Wire Rope Incorporated Company	129.11
Hebei Minmetals Co., Ltd	Huanghua Jinhai Hardware Products Co., Ltd	129.11
Hebei Minmetals Co., Ltd	Huanghua Huarong Hardware Co., Ltd	129.11
Hebei Minmetals Co., Ltd	Shandong Jining Lianzhong Hardware Products Co., Ltd	129.11
Shandong Minmetals Co., Ltd	Huanghua Jinhai Hardware Products Co., Ltd	129.11
Shandong Minmetals Co., Ltd	Huanghua Xincheng Metal Products Co., Ltd	129.11
Shandong Minmetals Co., Ltd	Tianjin Shi Dagangqu Yuliang XianCaichang	129.11
Shandong Minmetals Co., Ltd	Tianjin Hengfeng Metal Wire Co., Ltd	129.11
Shandong Minmetals Co., Ltd	Tianjin Shi Jinghai Yicheng Hardware Products Co., Ltd	129.11
Fasten Group Imp. & Exp. Co., Ltd	Jiangsu Fasten Stock Co., Ltd	129.11
Fasten Group Imp. & Exp. Co., Ltd	Zhangjiagang Guanghua Communication Cable Materials Co., Ltd	129.11
Fasten Group Imp. & Exp. Co., Ltd	Zhangjiagang Kaihua Metal Products Co., Ltd	129.11
Qingdao Ant Hardware Manufacturing Co., Ltd.	Qingdao Ant Hardware Manufacturing Co., Ltd	129.11
Suntec Industries Co., Ltd	Tianjin Jinnan 4th Wire Factory	129.11
Suntec Industries Co., Ltd	Tianjin Yinshan Manufacture & Trade Co., Ltd	129.11
Suntec Industries Co., Ltd	Tianjin Zhaohong Metal Products Co., Ltd	129.11
Suntec Industries Co., Ltd	Tianjin Wandai Metal Products Co., Ltd	129.11
Suntec Industries Co., Ltd	Tianjin Dagang Wire Factory	129.11
Suntec Industries Co., Ltd	Tianjin Jinghai Yicheng Metal Products Co., Ltd	129.11
Suntec Industries Co., Ltd	Tianjin Liquan Metal Products Co., Ltd	129.11
Suntec Industries Co., Ltd	Tianjin Huayuan Times Metal Products Co., Ltd	129.11
Suntec Industries Co., Ltd	Tianjin Fusheng Metal Products Co., Ltd	129.11
M & M Industries Co., Ltd	Tianjin Huayuan Times Metal Products Co., Ltd	129.11
M & M Industries Co., Ltd	Tianjin Huayuan Metal Wire Products Co., Ltd	129.11
M & M Industries Co., Ltd	Tianjin Tianxin Metal Products Co., Ltd	129.11
M & M Industries Co., Ltd	Tianjin Jinghai County Yongshun Metal Products Mill	129.11
M & M Industries Co., Ltd	Huanghua Jinhai Hardware Products Co., Ltd	129.11
Shaanxi New Mile International Trade Co., Ltd.	Tianjin Huayuan Metal Wire Products Co., Ltd	129.11
Shaanxi New Mile International Trade Co., Ltd.	Tianjin Jinghai Yicheng Metal Products Co., Ltd	129.11
Shaanxi New Mile International Trade Co., Ltd.	Tianjin Zhaohong Metal Products Co., Ltd	129.11
Shaanxi New Mile International Trade Co., Ltd.	Tianjin Lianxing Metal Products Co., Ltd	129.11

[7] *See* Memorandum to the File from Katie Marksberry, Case Analyst: Program Analysis for the Amended Preliminary Determination of Antidumping Duty Investigation of Galvanized Steel Wire from the People's Republic of China: Anhui Baozhang Metal Products Limited, dated concurrently with this **Federal Register** notice.

[8] *See* Memorandum to the File from Katie Marksberry, Case Analyst: Investigation of Galvanized Steel Wire from the People's Republic of China: Amended Preliminary Weight-Averaged Margin for Separate Rate Companies, dated concurrently with this **Federal Register** notice.

GALVANIZED STEEL WIRE FROM THE PRC—Continued

Exporter	Producer	Weighted-average margin (percent)
Shaanxi New Mile International Trade Co., Ltd.	Tianjin Beichen Gangjiaoxian Metal Products Co., Ltd, Fuli Branch	129.11
Shaanxi New Mile International Trade Co., Ltd.	Shenzhou Hongli Metal Products Co., Ltd	129.11
Hebei Cangzhou New Century Foreign Trade Co., Ltd.	Tianjin Huayuan Metal Wire Products Co., Ltd	129.11
Hebei Cangzhou New Century Foreign Trade Co., Ltd.	Tianjin Randa Metal Products Factory	129.11
Hebei Cangzhou New Century Foreign Trade Co., Ltd.	Tianjin Jinghai Yicheng Metal Products Co., Ltd	129.11
Hebei Cangzhou New Century Foreign Trade Co., Ltd.	Tianjin Jinghai Hongjiufeng Wire Products Co., Ltd	129.11
Hebei Cangzhou New Century Foreign Trade Co., Ltd.	Huanghua Jinhai Hardware Products Co., Ltd	129.11
Dezhou Hualude Hardware Products Co., Ltd.	Tianjin Jinghai Yicheng Metal Products Co., Ltd	129.11
Dezhou Hualude Hardware Products Co., Ltd.	Tianjin Yinshan Industry and Trade Co., Ltd	129.11
Dezhou Hualude Hardware Products Co., Ltd.	Tianjin Zhenyuan Industry and Trade Co., Ltd	129.11
Dezhou Hualude Hardware Products Co., Ltd.	Dingzhou Xuri Metal Products Factory	129.11
Dezhou Hualude Hardware Products Co., Ltd.	Huanghua Jinhai Hardware Products Co., Ltd	129.11
Dezhou Hualude Hardware Products Co., Ltd.	Tianjin Dagang Wire Mill	129.11
Dezhou Hualude Hardware Products Co., Ltd.	Tianjin Huayuan Industrial Company	129.11
Dezhou Hualude Hardware Products Co., Ltd.	Hebei Yongwei Metal Products Co., Ltd	129.11
Dezhou Hualude Hardware Products Co., Ltd.	Tianjin Guanshun Metal Products Co., Ltd	129.11
Shanghai SETI Enterprise International Co., Ltd.	Shanghai Xiaoyu Metal Products Co., Ltd	129.11
Xi'an Metals and Minerals Import and Export Co., Ltd.	Tianjin Jinyongtai Hardware Products Co., Ltd	129.11
Xi'an Metals and Minerals Import and Export Co., Ltd.	Tianjin Hengfeng Metal Wire Co., Ltd	129.11
Xi'an Metals and Minerals Import and Export Co., Ltd.	Shenzhou City Hongli Hardware Manufacturing Co., Ltd	129.11
Xi'an Metals and Minerals Import and Export Co., Ltd.	Tianjin Dagang Jinding Metal Products Factory	129.11
PRC-wide Rate [9]		235.00

The collection of bonds or cash deposits and suspension of liquidation instructions will be revised accordingly and parties will be notified of this determination, in accordance with section 733(d) and (f) of the Tariff Act of 1930, as amended (''Act'').

[9] The PRC-wide entity covers all companies not receiving a separate rate, including: Tianjin Huayuan Metal Wire Products Co., Ltd; Tianjin Meijiahua Trade Co., Ltd; Tianjin Huayuan Times Metal Products Co., Ltd.; Tianjin Tianxin Metal Products Co., Ltd.;Tianjin Jinghai Yicheng Metal Products Co., Ltd.; .Anping Shuangmai Metal Products Co., Ltd.; Anping Xinhong Wire Mesh Co Ltd.; Beijing Catic Industry Limited; Benxi Wasainuo Metal Packaging Production Co., Ltd.; China National Electronics Imp. & Exp. Ningbo Co., Ltd.; Easen Corp.; Ecms O/B Tianjin Huayuan Metal Wire; Hebei Dongfang Hardware And Mesh Co., Ltd.; Hebei Longda Trade Co., Ltd.; Huanghua Yufutai Hardware Products Co., Ltd.; Maccaferri (Changsha) Enviro-Tech Co.; Nantong Long Yang International Trade Co., Ltd.; Shandong Hualing Hardware & Tools Co. Ltd.; Shanghai Multi-development Enterprises; Shanghai Suntec Industries Co., Ltd.; Tianjin Jing Weida International Trade Co., Ltd.; Tianjin Pcss Trading Co., Ltd.; and Weifang Hecheng International Trade Co., Ltd.

International Trade Commission Notification

In accordance with section 733(f) of the Act, we have notified the International Trade Commission (''ITC'') of our amended preliminary determination. If our final determination is affirmative, the ITC will make its final determination as to whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of galvanized steel wire, or sales (or the likelihood of sales) for importation, of the merchandise under investigation, within 45 days of our final determination.

This determination is issued and published in accordance with sections 733(f), and 777(i) of the Act and 19 CFR 351.224(e). The PRC-wide rate is unchanged from the *Preliminary Determination.*

Dated: November 18, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–30751 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–928]

Uncovered Innerspring Units From the People's Republic of China: Second Extension of Final Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') is extending the time limit for the final results of the first new shipper review of uncovered innerspring units (''innersprings'') from the People's Republic of China (''PRC''). The review covers the period of review (''POR'') of February 1, 2010, through July 31, 2010.

DATES: *Effective Date:* November 29, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; *telephone:* (202) 482–0413.

Background

On August 4, 2011, the Department published in the **Federal Register** the *Preliminary Results* of the new shipper review of innersprings from the PRC.[1] On October 24, 2011, the Department extended the final results until November 22, 2011.[2] The respondent in this new shipper review is Foshan Nanhai Jiujiang Quan Li Spring Hardware Factory (''Quan Li'').

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Tariff Act of 1930, as amended (the ''Act''), and section 351.214(i)(1) of the Department's regulations, require the Department to issue the final results in a new shipper review 90 days after the date on which the preliminary results are issued. The Department may, however, extend the deadline for completion of the final results of a new shipper review to 150 days if it determines that the case is extraordinarily complicated.[3]

Extension of Time Limit for Final Results of Review

We determine that this case is extraordinarily complicated because the Department requires additional time to analyze interested parties' case and rebuttal briefs concerning the *bona fide* nature of the sale under review. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act, and section 351.214(i)(2) of the Department's regulations, we are fully extending the time for the completion of the final results of this review until December 23, 2011.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B) and 777(i)(1) of the Act.

Dated: November 18, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–30776 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–819]

Certain Lined Paper Products From Indonesia: Final Results of the Expedited Sunset Review of the Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce

DATES: *Effective Date:* November 29, 2011

SUMMARY: The Department has conducted an expedited sunset review of the countervailing duty (''CVD'') order on certain lined paper products (''lined paper'') from Indonesia. As a result of the review, the Department finds that revocation of the CVD order would be likely to lead to a continuation or recurrence of a countervailable subsidy at the rates identified in the ''Final Results of Review'' section of this notice.

FOR FURTHER INFORMATION CONTACT: Mary Kolberg, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–1785.

SUPPLEMENTARY INFORMATION:

Background

On August 1, 2011, the Department published the notice of initiation of the first sunset review of the CVD order on lined paper from Indonesia, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). *See Initiation of Five-Year (''Sunset'') Review,* 76 FR 45778 (August 1, 2011). The Department received a notice of intent to participate in this review from the Association of American School Paper Suppliers and its members (collectively, ''Petitioners''), within the deadline specified in 19 CFR 351.218(d)(1)(i). Petitioners claimed interested party status for this review under section 771(9)(C) of the Act, as manufacturers of the domestic like product in the United States.

On August 31, 2011, the Department received a complete substantive response from Petitioners within the deadline specified in 19 CFR 351.218(d)(3)(i). We received no substantive responses from any respondent interested parties. As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), the Department conducted an expedited sunset review of the CVD order.

Scope of the Order

The scope of the order includes certain lined paper products, typically school supplies,[1] composed of or including paper that incorporates straight horizontal and/or vertical lines on ten or more paper sheets,[2] including but not limited to such products as single- and multi-subject notebooks, composition books, wireless notebooks, looseleaf or glued filler paper, graph paper, and laboratory notebooks, and with the smaller dimension of the paper measuring 6 inches to 15 inches (inclusive) and the larger dimension of the paper measuring 8¾ inches to 15 inches (inclusive). Page dimensions are measured size (not advertised, stated, or ''tear-out'' size), and are measured as they appear in the product (*i.e.,* stitched and folded pages in a notebook are measured by the size of the page as it appears in the notebook page, not the size of the unfolded paper). However, for measurement purposes, pages with tapered or rounded edges shall be measured at their longest and widest points. Subject lined paper products may be loose, packaged or bound using any binding method (other than case bound through the inclusion of binders board, a spine strip, and cover wrap). Subject merchandise may or may not contain any combination of a front cover, a rear cover, and/or backing of

[1] *See Uncovered Innerspring Units from the People's Republic of China: Preliminary Intent to Rescind New Shipper Review,* 76 FR 47151 (August 4, 2011) (''Preliminary Results'').

[2] *See Uncovered Innerspring Units from the People's Republic of China: Extension of Final Results of Antidumping Duty New Shipper Review,* 76 FR 65695 (October 24, 2011).

[3] *See* section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2).

[1] For purposes of this scope definition, the actual use of or labeling these products as school supplies or non-school supplies is not a defining characteristic.

[2] There shall be no minimum page requirement for looseleaf filler paper.

any composition, regardless of the inclusion of images or graphics on the cover, backing, or paper. Subject merchandise is within the scope of the order whether or not the lined paper and/or cover are hole punched, drilled, perforated, and/or reinforced. Subject merchandise may contain accessory or informational items including but not limited to pockets, tabs, dividers, closure devices, index cards, stencils, protractors, writing implements, reference materials such as mathematical tables, or printed items such as sticker sheets or miniature calendars, if such items are physically incorporated, included with, or attached to the product, cover and/or backing thereto.

Specifically excluded from the scope of the order are: Unlined copy machine paper; writing pads with a backing (including but not limited to products commonly known as ''tablets,'' ''note pads,'' ''legal pads,'' and ''quadrille pads''), provided that they do not have a front cover (whether permanent or removable). This exclusion does not apply to such writing pads if they consist of hole-punched or drilled filler paper; three-ring or multiple-ring binders, or notebook organizers incorporating such a ring binder provided that they do not include subject paper; index cards; printed books and other books that are case bound through the inclusion of binders board, a spine strip, and cover wrap; newspapers; pictures and photographs; desk and wall calendars and organizers (including but not limited to such products generally known as ''office planners,'' ''time books,'' and ''appointment books''); telephone logs; address books; columnar pads and tablets, with or without covers, primarily suited for the recording of written numerical business data; lined business or office forms, including but not limited to: preprinted business forms, lined invoice pads and paper, mailing and address labels, manifests, and shipping log books; lined continuous computer paper; boxed or packaged writing stationary (including but not limited to products commonly known as ''fine business paper,'' ''parchment paper,'' and ''letterhead''), whether or not containing a lined header or decorative lines; Stenographic pads (''steno pads''), Gregg ruled,[3] measuring 6 inches by 9 inches.

Also excluded from the scope of the order are the following trademarked products: Fly™ lined paper products: A notebook, notebook organizer, loose or glued note paper, with papers that are printed with infrared reflective inks and readable only by a Fly™ pen-top computer. The product must bear the valid trademark Fly™.[4] Zwipes™: A notebook or notebook organizer made with a blended polyolefin writing surface as the cover and pocket surfaces of the notebook, suitable for writing using a specially-developed permanent marker and erase system (known as a Zwipes™ pen). This system allows the marker portion to mark the writing surface with a permanent ink. The eraser portion of the marker dispenses a solvent capable of solubilizing the permanent ink allowing the ink to be removed. The product must bear the valid trademark Zwipes™.[5] FiveStar®Advance™: A notebook or notebook organizer bound by a continuous spiral, or helical, wire and with plastic front and rear covers made of a blended polyolefin plastic material joined by 300 denier polyester, coated on the backside with PVC (poly vinyl chloride) coating, and extending the entire length of the spiral or helical wire. The polyolefin plastic covers are of specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). Integral with the stitching that attaches the polyester spine covering, is captured both ends of a 1'' wide elastic fabric band. This band is located 2⅜'' from the top of the front plastic cover and provides pen or pencil storage. Both ends of the spiral wire are cut and then bent backwards to overlap with the previous coil but specifically outside the coil diameter but inside the polyester covering. During construction, the polyester covering is sewn to the front and rear covers face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. The flexible polyester material forms a covering over the spiral wire to protect it and provide a comfortable grip on the product. The product must bear the valid trademarks FiveStar®Advance™.[6] FiveStar Flex™: a notebook, a notebook organizer, or binder with plastic polyolefin front and rear covers joined by 300 denier polyester spine cover extending the entire length of the spine and bound by a 3-ring plastic fixture. The polyolefin plastic covers are of a specific thickness; front cover is .019 inches (within normal manufacturing tolerances) and rear cover is .028 inches (within normal manufacturing tolerances). During construction, the polyester covering is sewn to the front cover face to face (outside to outside) so that when the book is closed, the stitching is concealed from the outside. During construction, the polyester cover is sewn to the back cover with the outside of the polyester spine cover to the inside back cover. Both free ends (the ends not sewn to the cover and back) are stitched with a turned edge construction. Each ring within the fixture is comprised of a flexible strap portion that snaps into a stationary post which forms a closed binding ring. The ring fixture is riveted with six metal rivets and sewn to the back plastic cover and is specifically positioned on the outside back cover. The product must bear the valid trademark FiveStar Flex™.[7]

Merchandise subject to the order is typically imported under headings 4810.22.5044, 4811.90.9035, 4811.90.9050, 4811.90.9080, 4811.90.9090, 4820.10.2010, 4820.10.2020, 4820.10.2030, 4820.10.2040, 4820.10.2050, 4820.10.2060, 4820.10.4000, and 4820.30.0040 of the Harmonized Tariff Schedule of the United States.

The tariff classifications are provided for convenience and U.S. Customs and Border Protection (''CBP'') purposes; however, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in these reviews are addressed in the Issues and Decision Memorandum (''Decision Memorandum'') from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration, dated concurrently with this notice, which is hereby adopted by this notice. The issues discussed in the Decision Memorandum include the likelihood of continuation or recurrence of a countervailable subsidy if the order were revoked, the net countervailable subsidy likely to prevail if the order were revoked, and the nature of the subsidies. The Issues and Decision

[3] ''Gregg ruling'' consists of a single- or double-margin vertical ruling line down the center of the page. For a six-inch by nine-inch stenographic pad, the ruling would be located approximately three inches from the left of the book.

[4] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[5] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[6] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

[7] Products found to be bearing an invalidly licensed or used trademark are not excluded from the scope.

Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). Access to IA Access is available in the Central Records Unit (''CRU''), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Final Results of Review

Pursuant to sections 752(c)(1) and (3) of the Act, we determine that revocation of the CVD order on lined paper from Indonesia would be likely to lead to continuation or recurrence of the countervailable subsidy rates listed below:

Manufacturers/producers/exporters	Net countervailable subsidy (percent)
PT. Pabrik Kertas Tjiwi Kimia Tbk	40.55
All Others	40.55

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing the final results and notice in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: November 16, 2011.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2011–30773 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–552–802]

Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results of the New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 29, 2011.

SUMMARY: The Department of Commerce (the ''Department'') has decided to extend the time limit for the preliminary results of the new shipper review (''NSR'') of the antidumping duty order on certain frozen warmwater shrimp (''shrimp'') from the Socialist Republic of Vietnam (''Vietnam'') to January 9, 2012. The period of review (''POR'') for this NSR is February 1, 2010, through January 31, 2011.

FOR FURTHER INFORMATION CONTACT: Susan Pulongbarit or Seth Isenberg, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–4031 and (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

Background

The antidumping duty order on shrimp from Vietnam was published in the **Federal Register** on February 1, 2005.[1] On February 28, 2011, pursuant to section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the ''Act''), and 19 CFR 351.214(c), the Department received a NSR request from Thong Thuan Company Limited and its subsidiary company, Thong Thuan Seafood Company Limited (collectively, ''Thong Thuan''). Thong Thuan certified that it is a producer and exporter of the subject merchandise upon which the request was based.

The notice initiating the NSR was published in the **Federal Register** on March 23, 2011.[2] The Department extended the time limit for the preliminary results by 60 days on September 7, 2011.[3] The Department extended the time limit for the preliminary results by an additional 30 days on November 1, 2011.[4] The preliminary results are currently due no later than December 9, 2011.

Statutory Time Limits

Section 751(a)(2)(B)(iv) of the Act, provides that the Department will issue the preliminary results of a new shipper review of an antidumping duty order within 180 days after the day on which the review was initiated. *See also* 19 CFR 351.214 (i)(1). The Act further provides that the Department may extend that 180-day period to 300 days if it determines that the case is extraordinarily complicated. *See also* 19 CFR 351.214 (i)(2).

Extension of Time Limit of Preliminary Results

The Department determines that this new shipper review involves extraordinarily complicated methodological issues, including Thong Thuan's multiple production stages for subject merchandise and the need to evaluate the *bona fide* nature of Thong Thuan's sales. The Department finds that these extraordinarily complicated issues require additional time to evaluate. Therefore, in accordance with section 751(a)(2)(B)(iv) of the Act and 19 CFR 351.214(i)(2), the Department is extending the time limit for the preliminary results by an additional 30 days. The preliminary results are now due no later than January 8, 2012. As that day falls on a Sunday, the final results are due no later than January 9, 2012.[5] The final results continue to be due 90 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(2)(B)(iv) and 777(i) of the Act.

Dated: November 21, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–30747 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam,* 70 FR 5152 (February 1, 2005).

[2] *See Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam: Initiation of Antidumping Duty New Shipper Review,* 76 FR 16384 (March 23, 2011).

[3] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results of the New Shipper Review,* 76 FR 55350 (September 7, 2011).

[4] *See Certain Frozen Warmwater Shrimp From the Socialist Republic of Vietnam: Extension of Time Limit for the Preliminary Results of the New Shipper Review,* 76 FR 67418 (November 1, 2011).

[5] *See Notice of Clarification: Application of ''Next Business Day'' Rule for Administrative Determination Deadlines Pursuant of the Tariff Act of 1930, As Amended,* 70 FR 24533 (May 10, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

Healthcare Technology, Policy & Trade Mission: Mexico City, Mexico, May 13–16, 2012

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

Mission Description

The United States Department of Commerce, International Trade Administration, U.S. and Foreign Commercial Service (CS) is organizing an executive-led healthcare technology policy and trade mission to Mexico City, May 13–16, 2012. This mission is intended to focus on a variety of U.S. suppliers of healthcare information technologies (IT), medical devices, and other medical technology.

The mission will introduce U.S. company participants to industry leaders and government officials in Mexico City to learn about various opportunities in the IT healthcare, medical devices, and other medical technology industries in Mexico. Participating in an official U.S. industry delegation, rather than traveling to Mexico independently, will enhance the companies' ability to gain access to key players and thought leaders in the healthcare field and obtain important policy information regarding their respective markets. The mission will include group meetings with government officials and with private sector industrial groups and visits to hospitals and other healthcare institutions. An optional day of Gold Key meetings will be offered for an additional fee.

Commercial Setting

The Mexico IT healthcare sector is an emerging market as healthcare institutions have begun identifying, seeking out and implementing technologies to become more efficient and competitive. Currently, the most popular IT applications include patient control, electronic filing, supplies inventory control, pharmacy inventory and services management, and security systems.

Potential clients for IT in Mexico's healthcare sector are mostly large public and private hospitals with resources to purchase sophisticated technologies to automate patient services, administrative processes and supplies control systems. In the Mexican public sector there are 1,578 hospitals of which, only 310 have more than 120 beds. In the private sector, of the 3,140 hospitals, only 80 have over 50 beds. Most of these hospitals offer highly specialized healthcare services and are located in medium and large Mexican cities. There are also some medium-sized private hospitals that offer specialty services and focus on high income, insured patients. These hospitals also represent potential users of IT healthcare applications.

In addition, Mexico is a good market for medical devices. In 2010, total imports of medical equipment, instruments and other medical devices reached $3.5 billion. Of these imports 57%, or $2 billion, were of U.S. origin. With the clarification and pronouncement of regulations for medical technologies, Mexico is expected to become an even more attractive market for U.S. companies.

Best Prospects

Hospitals in Mexico are upgrading facilities and seeking high technology equipment and medical devices, as well as greater automation, control and supervision of their operations, medical supplies, billing and radiology & imaging. In addition, the sector is open to technological solutions that can provide real time information through online systems and mobile devices. Systems and products that are in demand include:

- Electronic Health Record (EHR)
- Automation hardware and software
- Billing and other administrative automation systems
- Real-time databases and Web sites with healthcare information
- Imaging data transfer and storaging
- Specialty medical instruments
- Diagnostic medical equipment

Mission Goals

The short term goals of the Healthcare Technology, Policy and Trade Mission to Mexico are, (1) to introduce U.S. companies to industry leaders and government officials in Mexico City to learn about various opportunities in the IT healthcare, medical devices, and other medical technology industries; (2) to get a first-hand look at current use of healthcare technology in Mexico's top hospitals and other healthcare institutions; (3) create a business networking environment for U.S. firms to develop business relationships and meet with potential partners and end-users; (4) Optional day: to introduce U.S. companies to potential end-users, joint-venture partners and other industry representatives in Mexico City and its surrounding areas.

Mission Scenario

Upon arrival in Mexico City on May 13, participants will check into the hotel and participate in a commercial briefing on the Mexican healthcare sector followed by a cocktail meet-and-greet. On the morning of May 14, the U.S. delegation will leave together on a full day of meetings with Mexican government officials and visits to Mexico's top hospitals and other healthcare institutions. The day will end with an evening networking reception at the Ambassador's residence or other location to be confirmed, where delegates will have a chance to meet key government and industry contacts in the Mexico City area. On May 15 delegates will attend a healthcare technology policy and trade round table that will include a working lunch and last through the beginning of the afternoon. The round table will include presentations by key players in the Mexican healthcare sector and open discussion among all participants. On May 16, participants may opt for a day of one-on-one matchmaking appointments with previously screened potential partners, buyers and end-users at their places of business, escorted by U.S. Commercial Service staff. If requested, this service will come at an additional cost not included in the trade mission participation fee.

The following items are included in the price of the trade mission:

- Pre-travel webinar briefing, covering Mexican business practices and security;
- Mexican nationwide promotion of trade mission, including wide circulation of the printed company directory;
- Networking reception at Ambassador's residence or other venue in Mexico City on May 14;
- Coffee service and lunch during the technology, policy and trade round table on May 15;
- Group transportation to the reception and all-day visits held on May 14;
- Preferential hotel rates in Mexico City.

Optional Gold Key Service not included in the trade mission participation fee:

- The Gold Key Service provides U.S. firms with pre-screened appointments to explore the market and establish relationships with potential overseas agents, distributors, sales representatives and strategic business partners.
- The Commercial Service will schedule a conference call with the appropriate staff to understand your objectives and requirements.

• A designated escort/translator will be provided to assist you during scheduled matchmaking meetings.

Proposed Timetable

The mission program will begin on the evening of Sunday, May 13, 2012, and continue through May 15, with an optional day of matchmaking appointments on May 16.

May 13	Commercial Briefing: Mexican healthcare market, government procurement.
	Cocktail meet-and-greet.
May 14	Full-delegation government meetings, visits to hospitals and other healthcare institutions.
	Reception at Ambassador's residence or other venue to be confirmed.
May 15	Healthcare Technology, Policy and Trade Mission Round Table and working lunch.
May 16	Optional Gold Key matchmaking meetings with potential clients, distributors/representatives.

Participation Requirements

All parties interested in participating in the Healthcare Technology, Policy and Trade Mission must complete and submit an application for consideration by U.S. Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and to satisfy the selection criteria as outlined below. This mission has a goal of a minimum of 15 and a maximum of 20 companies to be selected to participate in the mission from the applicant pool. U.S. companies already doing business in Mexico as well as U.S. companies seeking to enter the market for the first time are encouraged to apply.

Fees and Expenses

After a company has been selected to participate in the mission, a payment to the U.S. Department of Commerce in the form of a participation fee is required. The participation fee will be $755 [1] for small and medium sized firms (SME) and the fee for large firms is $805. The fee for each additional firm representative (large firm or SME) is $300. Expenses for air travel (to Mexico City and return), lodging, meals and incidentals will be the responsibility of each mission participant. An additional fee for the optional Gold Key service is as follows: SME, $885 for 1 day of meetings and $535 for a second day; large firm, $2,300 for one day of meetings and $1,000 for a second day. Gold Key clients will also be responsible for transportation costs to all meetings, which is approximately $230 for a driver and rental car for 10 hours.

Conditions for Participation

• An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's products and/or services, primary market objectives, and goals for participation. If the U.S. Department of Commerce receives an incomplete application, the Department may reject the application, request additional information, or take the lack of information into account when evaluating the applications.

• Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content.

Selection Criteria for Participation

Selection will be based on the following criteria:

• Suitability of a company's products or services to the mission's goals

• Applicant's potential for business in Mexico, including likelihood of exports resulting from the trade mission

• Consistency of the applicant's goals and objectives with the stated scope of the trade mission (*i.e.,* the sectors indicated in the mission description)

Referrals from political organizations and any documents containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions/eg_main_023185.asp*) and other Internet web sites, press releases to general and trade media, direct mail, industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

Recruitment for the mission will begin immediately and conclude no later than March 9, 2012. CS Mexico will review all applications immediately after the deadline. We will inform applicants of selection decisions as soon as possible after March 9, 2012. Applications received after that date will be considered only if space and scheduling constraints permit.

Contacts

Mr. Everett Wakai, Commercial Officer, U.S. Commercial Service Mexico—Mexico City, Tel: (011–52–55) 5140–2603, *everett.wakai@trade.gov.*

Ms. Alicia Herrera, Commercial Specialist, U.S. Commercial Service Mexico—Mexico City, Tel: (011–52–55) 5140–2629, *alicia.herrera@trade.gov.*

Ms. Teresa Verthein, Commercial Assistant, U.S. Commercial Service Mexico—Mexico City, Tel: (011–52–55) 5140–2652, *teresa.verthein@trade.gov.*

Mr. Gerry Zapiain, International Trade Specialist, International Trade Administration—Washington, DC, Tel: (202) 482–2410, *gerry.zapiain@trade.gov.*

Elnora Moye,

Trade Program Assistant.

[FR Doc. 2011–30684 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–DS–P

[1] An SME is defined as a firm with 500 or fewer employees or that otherwise qualifies as a small business under SBA regulations (*see http://www.sba.gov/services/contracting_opportunities/sizestandardstopics/index.html*). Parent companies, affiliates, and subsidiaries will be considered when determining business size. The dual pricing reflects the Commercial Service's user fee schedule that became effective May 1, 2008

(*see http://www.export.gov/newsletter/march2008/initiatives.html* for additional information).

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Scope Rulings

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

DATES: *Effective Date:* November 29, 2011.

SUMMARY: The Department of Commerce (''Department'') hereby publishes a list of scope rulings completed between January 1, 2011, and March 31, 2011. In conjunction with this list, the Department is also publishing a list of requests for scope rulings and anticircumvention determinations pending as of March 31, 2011. We intend to publish future lists after the close of the next calendar quarter.

FOR FURTHER INFORMATION CONTACT: Julia Hancock, AD/CVD Operations, China/NME Group, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1394.

SUPPLEMENTARY INFORMATION:

Background

The Department's regulations provide that the Secretary will publish in the **Federal Register** a list of scope rulings on a quarterly basis. See 19 C.F.R. 351.225(o). Our most recent notification of scope rulings was published on May 31, 2011. *See Notice of Scope Rulings,* 76 FR 31301 (May 31, 2011). This current notice covers all scope rulings and anticircumvention determinations completed by Import Administration between January 1, 2011, and March 31, 2011, inclusive, and it also lists any scope or anticircumvention inquiries pending as of March 31, 2011. As described below, subsequent lists will follow after the close of each calendar quarter.

Scope Rulings Completed Between January 1, 2011, and March 31, 2011

People's Republic of China

A–570–601: Tapered Roller Bearings from the People's Republic of China

Requestor: Blackstone OTR LLC and OTR Wheel Engineering, Inc.; its wheel hub units/assemblies with tapered roller bearings are within the scope of the antidumping duty order; February 7, 2011.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Lifetime Products, Inc.; its four-foot folding tables are not within the scope of the antidumping duty order; February 17, 2011.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Lifetime Products, Inc.; its six-foot and eight-foot fold-in-half tables are not within the scope of the antidumping duty order; February 17, 2011.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Shermag Inc.; its two crib and changing table combinations are not within the scope of the antidumping duty order; February 8, 2011.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Poundex Associates Corp.; a bi-cast leather sleigh bed and a bi-cast leather platform bed are within the scope of the antidumping duty order; March 31, 2011.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Stork Craft Manufacturing; its two infant (baby) changing tables are within the scope of the antidumping duty order; February 24, 2011.

A–570–901: Lined Paper Products from the People's Republic of China

Requestor: C2F, Inc.; its PRO–0203–01 black journal and PTL–018121 black bound-stitched journal are not within the scope of the antidumping duty order; January 13, 2011.

A–570–901: Lined Paper Products from the People's Republic of China

Requestor: C2F, Inc.; its five bound-stitched journals (PTL–013142–2RB; PTL–016152–3SB; PTL–016143–2RD; PTL–016153–2RB; and PTL–019011) are not within the scope of the antidumping duty order; January 13, 2011.

A–570–922/C–570–923: Raw Flexible Magnets from the People's Republic of China

Requestor: Medical Action Industries Inc.; Magnet with a Mark and Magnet Strip with a Groove are within the scope of the antidumping duty and countervailing duty orders and the Surgical Instrument Drape is not within the scope of the antidumping duty and countervailing duty orders; January 11, 2011.

Multiple Countries

A–570–922/C–570–923/A–583–842: Raw Flexible Magnets from the People's Republic of China and Taiwan

Requestor: InterDesign; its sixty raw flexible magnets are not within the scope of the antidumping duty and countervailing duty orders; January 11, 2011.

A–570–937/C–570–938/A–122–853: Citric Acid and Certain Citrate Salts from the People's Republic of China and Canada

Requestor: Aceto Corporation; its calcium citrate USP is within the scope of the antidumping duty and countervailing duty orders; February 14, 2011.

Anticircumvention Determinations Completed Between January 1, 2011, and March 31, 2011

None.

Scope Inquiries Terminated Between January 1, 2011, and March 31, 2011

A–570–943/C–570–944: Oil Country Tubular Goods from the People's Republic of China

Requestor: TMK IPSCO; whether all green tubes are within the scope of the antidumping duty and countervailing duty orders; requested September 30, 2010; request withdrawn January 11, 2011.

Anticircumvention Inquiries Terminated Between January 1, 2011, and March 31, 2011

None.

Scope Inquiries Pending as of March 31, 2011

People's Republic of China

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Trade Associates Group, Ltd.; whether its candles (multiple designs) are within the scope of the antidumping duty order; requested June 11, 2009.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Sourcing International, LLC; whether its flower candles are within the scope of the antidumping duty order; requested June 24, 2009.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Sourcing International; whether its candles (multiple designs) are within the scope of the antidumping duty order; requested July 28, 2009.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Sourcing International; whether its floral bouquet candles are within the scope of the antidumping duty order; requested August 25, 2009.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: Candym Enterprises Ltd.; whether its vegetable candles are within the scope of the antidumping duty order; requested November 9, 2009.

A–570–504: Petroleum Wax Candles from the People's Republic of China

Requestor: R&D Chemicals, Inc.; whether its four Bite-Lite candles are within the scope of the antidumping duty order; requested March 4, 2011.

A–570–601: Tapered Roller Bearings from the People's Republic of China

Requestor: New Trend Engineering Limited; whether certain wheel hub units are within the scope of the

antidumping duty order; requested March 5, 2010; initiated June 15, 2010; preliminary ruling December 13, 2010.

A–570–601: Tapered Roller Bearings from the People's Republic of China

Requestor: Bosda International (USA) LLC and Kingdom Auto Parts Ltd.; whether certain wheel hub units are within the scope of the antidumping duty order; requested October 28, 2010.

A–570–864: Pure Magnesium in Granular Form from the People's Republic of China

Requestor: ESM Group Inc.; whether U.S.-origin pure magnesium exported to the People's Republic of China (''PRC'') for atomization and re-exported to the United States is subject to the antidumping duty order; requested February 11, 2011.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Lifetime Products, Inc.; whether its 33-inch round tables are within the scope of the antidumping duty order; requested February 4, 2011.

A–570–868: Folding Metal Tables and Chairs from the People's Republic of China

Requestor: Meco Corporation; whether its pedestal tables are within the scope of the antidumping duty order; requested February 28, 2011.

A–570–890: Wooden Bedroom Furniture from the People's Republic of China

Requestor: Acme Furniture Industry Inc.; whether its partially upholstered daybed with trundle unit and fully upholstered daybed without trundle unit are within the scope of the antidumping duty order; requested March 4, 2011.

A–570–891: Hand Trucks from the People's Republic of China

Requestor: WelCom Products; whether its MC2 Magna Cart, MCI Magna Cart and MCK Magna Cart are within the scope of the antidumping duty order; requested October 12, 2010.

A–570–900: Diamond Sawblades and Parts Thereof from the People's Republic of China

Requestor: Gang Yan Diamond Products, Inc.; whether its rescue/demolition sawblades are within the scope of the antidumping duty order; requested March 28, 2011.

A–570–912/C–570–913: Certain Pneumatic Off-the-Road Tires from the People's Republic of China

Requestor: Wide Open Cycles Inc.; whether custom-built, size 14.9–24, pneumatic off-the-road mud racing tires built exclusively for all terrain vehicles are within the scope of the antidumping duty order; requested December 9, 2010.

A–570–912/C–570–913: Certain New Pneumatic Off-The-Road Tires from the People's Republic of China

Requestor: OTR Wheel Engineering, Inc. (''OTR Wheel''); whether OTR Wheel's ''Trac Master'' and ''Traction Master'' tires are within the scope of the antidumping duty and countervailing duty orders; requested February 11, 2011.

A–570–916/C–570–917: Laminated Woven Sacks from the People's Republic of China

Requestor: The Super Poly Partnership; whether its laminated woven sacks are within the scope of the antidumping duty and countervailing duty orders; requested February 14, 2011.

A–570–920/C–570–921: Lightweight Thermal Paper from the People's Republic of China

Requestor: Paper Resources, LLC.; whether certain lightweight thermal paper (''LWTP'') converted into smaller LWTP rolls in the PRC, from jumbo LWTP rolls produced in certain third countries, is within the scope of the antidumping duty and countervailing duty orders; requested February 24, 2011.

A–570–922/C–570–923: Raw Flexible Magnets from the People's Republic of China

Requestor: Smith-Western Company; whether flexible magnets affixed to hard, inflexible plastic material are within the scope of the antidumping duty and countervailing duty orders; requested March 1, 2011.

A–570–928: Uncovered Innerspring Units from the People's Republic of China

Requestor: Wickline Bedding Enterprises; whether its unfinished mattress kits are within the scope of the antidumping duty order; requested March 8, 2011.

A–570–932: Steel Threaded Rod from the People's Republic of China

Requestor: Powerline Hardware, LLC; whether its spool bolts and shank pins are within the scope of the antidumping duty order; requested February 24, 2011.

A–570–932: Certain Steel Threaded Rod from the People's Republic of China

Requestor: A.L. Patterson; whether its engineered steel coil rod is within the scope of the antidumping duty order; requested March 4, 2011.

A–570–937/C–570–938: Citric Acid and Certain Citrate Salts from the People's Republic of China

Requestor: Global Commodity Group LLC; whether its blends of citric acid and blends of citrate salts are within the scope of the antidumping duty and countervailing duty orders; requested August 9, 2010; preliminary ruling March 7, 2011.

A–570–951: Certain Woven Electric Blankets from the People's Republic of China

Requestor: Eurow & O'Reilly Corporation; whether its automotive fleece electric blanket is within the scope of the antidumping duty order; requested March 11, 2011.

Japan

A–588–804: Ball Bearings and Parts Thereof from Japan

Requestor: American NTN Bearing Manufacturing Corporation; whether its magnetic encoders used in antilock braking systems in automobiles are within the scope of the antidumping duty order; requested March 3, 2011.

A–588–804: Ball Bearings and Parts Thereof from Japan

Requestor: Aisin Holdings of America; whether a worm assembly and a seat track roller are within the scope of the antidumping duty order; requested March 28, 2011.

Mexico

A–201–830: Carbon and Certain Alloy Steel Wire Rod from Mexico

Requestor: Nucor Corporation and Cascade Steel Rolling Mills, Inc.; whether wire rod with a diameter of less than 5.00 mm is within the scope of the antidumping duty order; requested February 14, 2011.

Multiple Countries

A–533–838/C–533–839/A–570–892: Carbazole Violet Pigment 23 from India and the People's Republic of China

Requestor: Nation Ford Chemical Co., and Sun Chemical Corp.; whether finished carbazole violet pigment exported from Japan is within the scope of the antidumping duty and countervailing duty orders; requested February 23, 2010.

A–570–922/C–570–923/A–583–842: Raw Flexible Magnets from the People's Republic of China and Taiwan

Requestor: Jingzhou Meihou Flexible Magnet Co. Ltd.; whether its three types of magnets (i.e., rolls of meter-wide magnet sheeting; craft magnets and door gasket extrusions) are within the scope of the antidumping duty and countervailing duty orders; requested March 30, 2011.

A–570–954/C–570–955/A–201–837: Certain Magnesia Carbon Bricks from Mexico and the People's Republic of China

Requestor: Vesuvius USA Corporation; whether tap hole sleeve systems, assembled or disassembled, sold and entered as a complete set, are covered by the antidumping duty and countervailing duty orders; requested November 1, 2010.

Anticircumvention Rulings Pending as of March 31, 2011

A–570–836: Glycine from the People's Republic of China

Requestor: Geo Specialty Chemicals, Inc. and Chattem Chemicals, Inc.; whether glycine from the PRC, when processed and re-packaged in India and exported as Indian-origin glycine, is circumventing the antidumping duty order; requested December 18, 2009; initiated October 22, 2010.

A–570–849: Certain Cut-to-Length Carbon Steel from the People's Republic of China

Requestor: ArcelorMittal USA, Inc.; Nucor Corporation; SSAB N.A.D., Evraz Claymont Steel and Evraz Oregon Steel Mills; whether certain cut-to-length carbon steel plate from the PRC that contains a small level of boron, involves such a minor alteration to the merchandise that is so insignificant that the plate is circumventing the antidumping duty order; requested February 17, 2010; initiated April 16, 2010.

A–570–894: Certain Tissue Paper Products from the People's Republic of China

Requestor: Seaman Paper Company of Massachusetts, Inc.; whether certain imports of tissue paper from the Socialist Republic of Vietnam are circumventing the antidumping duty order through means of third country assembly or completion; requested February 18, 2010; initiated April 5, 2010; preliminary ruling March 31, 2011.

A–570–918: Steel Wire Garment Hangers from the People's Republic of China

Requestor: M&B Metal Products Inc.; whether certain imports of steel wire garment hangers from the Socialist Republic of Vietnam are circumventing the antidumping duty order through means of third country assembly or completion of merchandise imported from the PRC; requested May 5, 2010; initiated July 22, 2010.

A–570–929: Small Diameter Graphite Electrodes from the People's Republic of China

Requestor: SGL Carbon LLC and Superior Graphite Co.; whether unfinished small diameter graphite electrodes produced in the PRC and completed and assembled in the United Kingdom are circumventing the antidumping duty order; initiated February 17, 2011.

A–821–807: Ferrovanadium and Nitrided Vanadium from Russia

Requester: AMG Vanadium, Inc.; whether vanadium pentoxide imports from Russia that are converted into ferrovanadium in the United States are circumventing the antidumping duty order; requested February 25, 2011.

Interested parties are invited to comment on the completeness of this list of pending scope and anticircumvention inquiries. Any comments should be submitted to the Deputy Assistant Secretary for AD/CVD Operations, Import Administration, International Trade Administration, 14th Street and Constitution Avenue, NW., APO/Dockets Unit, Room 1870, Washington, DC 20230.

This notice is published in accordance with 19 CFR 351.225(o).

Dated: July 22, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–30774 Filed 11–28–11; 8:45 a.m.]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–908]

Second Administrative Review of Sodium Hexametaphosphate From the People's Republic of China: Extension of Preliminary Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the ''Department'') is extending the time limit for the preliminary results of the administrative review of sodium hexametaphosphate (''sodium hex'') from the People's Republic of China (''PRC''). The review covers the period March 1, 2010, through February 28, 2011.

DATES: *Effective Date:* November 29, 2011.

FOR FURTHER INFORMATION CONTACT: Paul Walker, AD/CVD Operations, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, telephone (202) 482–0413.

Background

On April 27, 2011, the Department published in the **Federal Register** a notice of initiation of the administrative review of the antidumping duty order on sodium hex from the PRC.[1] The preliminary results of the review for sodium hex from the PRC are currently due no later than December 1, 2011.

Statutory Time Limits

In antidumping duty administrative reviews, section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the ''Act''), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested and a final determination within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days after the last day of the anniversary month.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this administrative review within the original time limit because the Department requires additional time to analyze questionnaire responses, issue supplemental questionnaires, possibly conduct verification, and to evaluate surrogate value submissions.

Therefore, the Department is extending the time limit for completion of the preliminary results of the administrative review by 60 days. The preliminary results will now be due no

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 76 FR 23545 (April 27, 2011).

later than January 30, 2011. The final results continue to be due 120 days after the publication of the preliminary results.

We are issuing and publishing this notice in accordance with sections 751(a)(3)(A) and 777(i) of the Act.

Dated: November 18, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–30753 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA832

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Missile Launch Operations From San Nicolas Island, CA

AGENCY: National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of issuance of a Letter of Authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that a letter of authorization (LOA) has been issued to the Naval Air Warfare Center Weapons Division, U.S. Navy (Navy), to take three species of seals and sea lions incidental to missile launch operations from San Nicolas Island (SNI), California, a military readiness activity.

DATES: Effective December 1, 2011, through November 30, 2012.

ADDRESSES: The LOA and supporting documentation are available for review by writing to P. Michael Payne, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service (NMFS), 1315 East West Highway, Silver Spring, MD 20910 or by telephoning one of the contacts listed below (**FOR FURTHER INFORMATION CONTACT**). Documents cited in this notice may be viewed, by appointment, during regular business hours, at the aforementioned address and at the Southwest Regional Office, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

FOR FURTHER INFORMATION CONTACT: Michelle Magliocca, Office of Protected Resources, NMFS, (301) 427–8401, or Monica DeAngelis, NMFS, (562) 980–3232.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and regulations are issued. However, for military readiness activities, the National Defense Authorization Act (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations. Under the MMPA, the term ''take'' means to harass, hunt, capture, or kill, or to attempt to harass, hunt, capture, or kill marine mammals.

Authorization may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant). In addition, NMFS must prescribe regulations that include permissible methods of taking and other means of effecting the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements for monitoring and reporting of such taking.

Regulations governing the taking of northern elephant seals (*Mirounga angustirostris*), Pacific harbor seals (*Phoca vitulina richardsi*), and California sea lions (*Zalophus californianus*), by harassment, incidental to missile launch operations at SNI, were issued on June 2, 2009, and remain in effect until June 2, 2014 (74 FR 26580, June 3, 2009). For detailed information on this action, please refer to that document. The regulations include mitigation, monitoring, and reporting requirements for the incidental take of marine mammals during missile launches at SNI.

Summary of Request

On November 10, 2011, NMFS received a request for an LOA renewal pursuant to the aforementioned regulations that would authorize, for a period not to exceed 1 year, take of pinnipeds, by harassment, incidental to missile launch operations from San Nicolas Island, CA.

Summary of Activity and Monitoring Conducted During 2010–2011

The Navy's monitoring report covers an extended period of time because NMFS issued a modified LOA in December 2010, that superseded the previous LOA issued in June 2010. As described in the Navy's monitoring report, the missile launch operations conducted by the Navy during this time period were within the scope and amounts authorized by the 2010–2011 LOA, and the levels of take remain within the scope and amounts contemplated by the final rule and detailed in the 2010–2011 LOA.

Planned Activities and Estimated Take for 2011–2012

During 2011–2012, the Navy expects to conduct the same type and amount of launches identified in the 2010–2011 LOA. Therefore, NMFS is authorizing the same amount of take authorized in 2010.

2010–2011 Monitoring

The Navy conducted the monitoring required by the 2010–2011 LOA and described in the Monitoring Plan, which included acoustic monitoring or missile launches and visual monitoring of pinnipeds. The Navy submitted their 2010–2011 Monitoring Report, which is posted on NMFS' Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm*), within the required timeframe. The Navy summarized their 2010–2011 monitoring efforts and results (beginning on page 11 of the report), which included 19 acoustic recordings and video recordings of more than 500 animals.

Authorization

The Navy complied with the requirements of the 2010–2011 LOA and NMFS has determined that there was no evidence of pinniped injuries or mortalities related to vehicle launches from SNI. The Navy's activities fell within the scope of the activities analyzed in the 2009 rule, and the observed take did not exceed that authorized in the 2010–2011 LOA. NMFS has determined that this action continues to have a negligible impact on the affected species or stocks of marine mammals on SNI. Accordingly, NMFS has issued an LOA to the Navy authorizing the take of marine mammals, by harassment, incidental to missile launch activities from SNI. The provision requiring that the activities not have an unmitigable adverse impact on the availability of the affected

species or stock for subsistence uses does not apply for this action.

Dated: November 23, 2011.

P. Michael Payne,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–30731 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. PTO–C–2011–0066]

Request for Comments on Additional USPTO Satellite Offices for the Nationwide Workforce Program

The United States Patent and Trademark Office (USPTO) is interested in gathering information on potential locations for future USPTO satellite offices that the USPTO is directed to establish, subject to available resources, under Section 23 of the America Invents Act (AIA). The establishment of satellite offices is an important component of the USPTO's continued efforts to recruit and retain a highly skilled workforce, reduce patent application pendency and improve quality, and enhance communication between the USPTO and the patent applicant community. An initial satellite office is already planned to be established in Detroit, Michigan. Subject to available resources, the USPTO will establish at least two more satellite offices in addition to the one in Detroit in accordance with the AIA.

Deadline: Written comments are requested on or before January 30, 2012. No public hearing will be held.

Written Comments: Submit comments electronically by email directly to the USPTO at *satelliteoffices@uspto.gov.* The USPTO prefers to receive comments via email; however, comments may also be submitted by postal mail addressed to: Azam Khan, Deputy Chief of Staff, United States Patent and Trademark Office, Mail Stop Office of Under Secretary and Director, P.O. Box 1450, Alexandria, VA, 22313–1450.

Comments may also be submitted through the Federal eRulemaking Portal Web site at *http://www.regulations.gov.* Additional instructions on providing comments through the Federal eRulemaking Portal are available at *http://www.regulations.gov.* All comments submitted directly to the USPTO or provided on the Federal eRulemaking Portal should include the docket number PTO–C–2011–0066, and should be identified in the subject line of the email or postal mailing as ''Nationwide Workforce Program.''

All written comments will be available for public inspection upon request at the Office of the Chief Administrative Officer located at Madison West, 10th Floor, 600 Dulaney Street Alexandra, VA, and will be available at the USPTO web site at *http://www.uspto.gov.* All comments made through the Federal eRulemaking Portal will be made publicly available on that Web site. Because comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

Contact: Azam Khan, Deputy Chief of Staff, Office of the Under Secretary and Director, at (571) 272–8600; by email at *azam.khan@uspto.gov;* or by postal mail addressed to: Azam Khan, Deputy Chief of Staff, United States Patent and Trademark Office, Mail Stop Office of Under Secretary and Director, P.O. Box 1450, Alexandria, VA, 22313–1450.

Additional Information: The USPTO requests information on potential cities and regions for future locations of satellite offices as part of its Nationwide Workforce Program.

An initial satellite office is planned to be established in Detroit, Michigan. A nationwide workforce model will enable the USPTO to expand its traditional hiring methods and seek out areas of the country where the resources, including human resources and technical expertise, exist to fulfill the USPTO's critical mission. It will enable the USPTO to achieve better outreach and interact with the patent applicant community. The USPTO is investigating options for establishing satellite offices in at least two additional cities, where the USPTO does not already have an office (Alexandria, Virginia) or plan to establish an office (Detroit, Michigan). In accordance with the AIA, the USPTO is looking for States and regions that would best serve the interests of our employees, the USPTO's user community, and America's patent and trademark system, while ensuring geographic diversity among USPTO's offices.

Before choosing Detroit, the USPTO considered multiple cities to determine the feasibility of the initial phase of this program. The criteria included, but was not limited to: Occupational clusters; patent attorneys and agents currently in the region; patent applications by state; access to universities with strong engineering programs; public transportation infrastructure and proximate location to a major airport; the ability to share facilities with other established governmental operations; the ability to support Departmental objectives, including CommerceConnect, and increase collaborations among Commerce bureaus and offices; and various economic factors, including cost of living and unemployment rates of the city.

Comments should provide information that supports the USPTO's purposes of establishing satellite offices, including that the location will:

(1) Increase outreach activities to better connect patent filers and innovators with the USPTO, including the number of patent filings and grants by the city/region as well as other information that provides insight into the region's innovation activity;

(2) Enhance patent examiner retention, including quality of life indicators such as average household income, cost of living factors, and other factors related to employee retention;

(3) Improve recruitment of patent examiners, including data on employment rates and other economic factors in the area, science and technology professionals, as well as legal professionals in the workforce and other related information;

(4) Decrease the number of patent applications awaiting examination; and

(5) Improve the quality of patent examination.

Comments may also include any other information the Office may find useful in determining future locations such as information related to available office space, the presence of universities with strong engineering programs, the presence of research facilities, the economic impact to the region, and any other economic factors. Comments may also include information on additional factors the USPTO should consider in comparing regions.

While the Office welcomes and values all comments from the public in response to this request, these comments do not bind the Office to any further actions related to the comments, and the Office may not respond to any or every comment that is submitted. The Office will, however, consider all written submissions.

Any and all decisions made with regard to future satellite office locations will be made based on the criteria outlined in the AIA and in line with the goals and mission of the USPTO.

Dated: November 22, 2011.

David J. Kappos,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2011–30717 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–10–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (''Corporation''), has submitted a public information collection request (ICR) entitled CNCS Application Instructions and Reporting Questions for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Ms. Amy Borgstrom at (202) 606–6930. Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) *By fax to:* (202) 395–6974, *Attention:* Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by email to: smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on September 7, 2011. This comment period ended November 8, 2011. No public comments were received from this Notice.

Description: The Corporation is soliciting comments concerning application instructions designed to be used for grant competitions which the Corporation sponsors from time to time. These competitions are designed and conducted, when appropriations are available, to address the Corporation's strategic plan focus areas or other priorities. Applicants will respond to the questions included in these instructions in order to apply for funding in these Corporation competitions. Successful applicants will report on an annual basis on their progress using the attached Annual Reporting Questions. Their Annual Reports will provide information for Corporation staff to monitor grantee progress, and to respond to requests from Congress and other stakeholders.

Type of Review: Renewal.

Agency: Corporation for National and Community Service.

Title: CNCS Application Instructions and Reporting Questions.

OMB Number: 3045–0129.

Agency Number: Potential beneficiaries.

Total Respondents: 2,000 applicants and 200 successful applicants.

Frequency: Annually.

Average Time Per Response: 8 hours to apply and 8 hours to report.

Estimated Total Burden Hours: 17,600 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: November 21, 2011.

Idara Nickelson,

Chief of Program Operations.

[FR Doc. 2011–30616 Filed 11–28–11; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0138]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, Department of Defense (DoD).

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective without further notice on December 29, 2011 unless comments are received which would result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler, DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: November 22, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S375.20

SYSTEM NAME:

Employee Relations under Negotiated Grievance Procedures (August 7, 2009, 74 FR 39649).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete second, third, and fourth paragraphs and replace with ''Defense Logistics Agency Human Resources Services, 3990 East Broad Street, Building 11, Section 3, Columbus, OH 43213–0919.

Defense Logistics Agency Human Resources Services, 2001 Mission Drive, Suite 3, New Cumberland, PA 17070–5042.

Defense Logistics Agency Human Resources Services-Department of Defense Customers, 3990 East Broad Street, Building 306, Columbus, OH 43218–1158.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete first paragraph and replace with ''The file includes the subject individual's name, address and telephone numbers, and details pertaining to the discipline, grievance, complaint, or appeal.''

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete third paragraph and replace with ''To appeal authorities for conducting hearings in connection with employee appeals from adverse actions and formal discrimination complaints.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director, Defense Logistics Agency Human Resources, 8725 John J. Kingman Road, Suite 3630, Fort Belvoir, VA 22060–6221.

Director, Defense Logistics Agency Human Resources Services, 3990 East Broad Street, Building 11, Section 3, Columbus, OH 43213–0919.

Director, Defense Logistics Agency Human Resources Services, 2001 Mission Drive, Suite 3, New Cumberland, PA 17070–5042.

Director, Defense Logistics Agency Human Resources Services-Department of Defense Customers, 3990 East Broad Street, Building 306, Columbus, OH 43218–1158.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, *ATTN:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.''

* * * * *

S375.20

SYSTEM NAME:

Employee Relations under Negotiated Grievance Procedures.

SYSTEM LOCATION:

Defense Logistics Agency Human Resources Center (DHRC), 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

Defense Logistics Agency Human Resources Services, 3990 East Broad Street, Building 11, Section 3, Columbus, OH 43213–0919.

Defense Logistics Agency Human Resources Services, 2001 Mission Drive, Suite 3, New Cumberland, PA 17070–5042.

Defense Logistics Agency Human Resources Services-Department of Defense Customers, 3990 East Broad Street, Building 306, Columbus, OH 43218–1158.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former civilian employees and applicants on who discipline, grievance, complaint or appeal records exist.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file includes the subject individual's name, address and telephone numbers, and details pertaining to the discipline, grievance, complaint, or appeal.

Note: Equal Employment Opportunity (EEO) complaints filed under statutory Equal Employment Opportunity Commission procedures are covered under EEOC/GOVT–1, entitled Equal Employment Opportunity in the Federal Government Complaint and Appeal Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 92–261; 5 U.S.C. Chapter 33, Examination, Selection, and Placement; 5 U.S.C. Chapter 75, Adverse Actions; 5 U.S.C. Chapter 71, Labor-Management Relations, and 29 U.S.C. Chap. 14, Age Discrimination Employment.

PURPOSE(S):

Records are used to process, administer and adjudicate discipline, grievance, complaints, and appeal actions. Records are also used for litigation and program evaluation purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act of 1974, these records may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To representatives of the Office of Personnel Management (OPM) on matters relating to the inspection, survey, audit or evaluation of civilian personnel management programs or personnel actions, or such other matters under the jurisdiction of the OPM.

To appeal authorities for conducting hearings in connection with employee appeals from adverse actions and formal discrimination complaints.

The DoD ''Blanket Routine Uses'' apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on paper and/or on electronic storage media.

RETRIEVABILITY:

Records are retrieved by the subject individual's name.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computer files are password

protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non duty hours.

RETENTION AND DISPOSAL:

Records are destroyed four years after case is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Logistics Agency Human Resources, 8725 John J. Kingman Road, Suite 3630, Fort Belvoir, VA 22060–6221.

Director, Defense Logistics Agency Human Resources Services, 3990 East Broad Street, Building 11, Section 3, Columbus, OH 43213–0919.

Director, Defense Logistics Agency Human Resources Services, 2001 Mission Drive, Suite 3, New Cumberland, PA 17070–5042.

Director, Defense Logistics Agency Human Resources Services-Department of Defense Customers, 3990 East Broad Street, Building 306, Columbus, OH 43218–1158.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Inquiry should contain the subject individual's full name.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents, and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Supervisors or other appointed officials designated for this purpose, Human Resource specialists, and grievant.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 2011–30631 Filed 11–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0135]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, Department of Defense (DoD).

ACTION: Notice to delete one system of records.

SUMMARY: The Defense Information Systems Agency is deleting one system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on December 29, 2011 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by dock number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette M. Weathers-Jenkins, Defense Information Systems Agency, 6916 Cooper Avenue, Fort Meade, MD 20755–7901, or by phone at (301) 225–8158.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notice subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The Defense Information Systems Agency proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: November 23, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:
K890.12

Identity Management (IDM) (March 18, 2010, 75 FR 13090).

REASON:

Due to policy changes and current budget constraints, we have decided to cancel the Secure Automated Account Manager (SAAM) project (formerly known as Identity Management).

[FR Doc. 2011–30698 Filed 11–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2011–0027]

Proposed Collection; Comment Request

AGENCY: Department of the Air Force, Department of Defense,

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Air Force announces a proposed new public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by January 30, 2012.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to: Cadet Summer Research Program (CSRP) Director, USAF Academy, *Attn:* Captain Andrew Radzicki, 2354 Fairchild Dr. Suite 6L–121, USAF Academy, CO 80840, or call the CSRP director at (719) 333–2889, DSN: 333.2889

Title, Associated Form, and OMB Number: Cadet Summer Research Program Exit Survey; No Associated Form; OMB Control Number 0701–TBD.

Needs and Uses: The Cadet Summer Research Program (CSRP) annually matches approximately 180 of the U.S. Air Force Academy's (USAFA's) top academic cadets with research projects proposed and funded by roughly 100 Air Force, DOD, Federal, and non-Federal (corporate, state, non-profit) organizations around the world. (a) This annual survey formalizes the feedback process to facilitate structured program improvement and systematic relationship maintenance. (b) Without a systematic feedback process, information or recommendations from the myriad of organizations is extremely difficult to maintain. If this information is lost or ignored, USAFA runs the risk of losing program sponsors or missing valuable suggestions for lowering program cost or increasing benefit for cadet or sponsor participants. To achieve this objective without the formal survey, individual department representatives solicit, record, and report sponsor and cadet feedback individually. This process is extremely expensive and less than optimal. Without the survey, feedback is more random, non-standard, and subjective. (c) The requested survey information is not readily available via other sources. (d) No known alternatives are less costly. (e) Information obtained via requested survey instrument will be reported to USAFA leadership and used to develop and implement program/process improvements. The impact of program/process adjustments can be assessed on an annual basis. (f) Recommended frequency of assessment is once annually, since sponsors change each year.

Affected Public: Businesses or other for-profit.

Annual Burden Hours: 50

Number of Respondents: 300

Responses per Respondent: 1

Average Burden per Response: 10 minutes

Frequency: Once annually

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Cadet Summer Research Program (CSRP) annually matches approximately 180 of the U.S. Air Force Academy's (USAFA's) top academic cadets with research projects proposed and funded by roughly 100 Air Force, DOD, Federal, and non-Federal (corporate, state, non-profit) organizations around the world. Without a systematic feedback process, information or recommendations from the myriad of organizations is extremely difficult to maintain. The information obtained via requested survey instrument will be reported to USAFA leadership and used to develop and implement program/process improvements.

Dated: November 23, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2011–30651 Filed 11–28–11; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Submission for OMB Review

AGENCY: Department of Education.

ACTION: Comment request.

SUMMARY: The Acting Director, Information Collection Clearance Division; Privacy, Information and Records Management Services; Office of Management, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13).

DATES: Interested persons are invited to submit comments on or before December 29, 2011.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street NW., Room 10222, New Executive Office Building, Washington, DC 20503, be faxed to (202) 395–5806 or emailed to *oira_submission@omb.eop.gov* with a cc: to *ICDocketMgr@ed.gov.* Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The OMB is particularly interested in comments which: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: November 23, 2011.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Office of Communication and Outreach

Type of Review: New.

Title of Collection: Green Ribbon Schools Application Package.

OMB Control Number: 1860–NEW.

Agency Form Number(s): N/A.

Frequency of Responses: Annually.

Affected Public: State, Local and Tribal Government.

Total Estimated Number of Annual Responses: 61,108.

Total Estimated Annual Burden Hours: 38,764.

Abstract: The Department of Education—Green Ribbon Schools (ED–GRS) is a recognition award that will recognize public and private elementary, middle and high schools that save energy, reduce costs, protect health, foster wellness, feature environmentally sustainable learning spaces, and offer effective environmental education.

ED will request data from nominating authorities that have evaluated schools according to the following categories: (1) Environmental impact and energy efficiency; (2) health environment; and (3) environmental literacy. This information will be used at the Department to conduct final review to ensure schools meet eligibility requirements, and meet high college- and career-ready academic standards, and then rate the finalists to select the awardees.

Copies of the information collection submission for OMB review may be accessed from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAMain* or from the Department's Web site at *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4713. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to the Internet address *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

[FR Doc. 2011–30704 Filed 11–28–11; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Comment Request.

SUMMARY: The Department of Education (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the reporting burden on the public and helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 30, 2012.

ADDRESSES: Comments regarding burden and/or the collection activity requirements should be electronically mailed to *ICDocketMgr@ed.gov* or mailed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Please note that written comments received in response to this notice will be considered public records.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that Federal agencies provide interested parties an early opportunity to comment on information collection requests. The Director, Information Collection Clearance Division, Regulatory Information Management Services, Office of Management, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: November 22, 2011.

Darrin King,

Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

Institute of Education Science

Type of Review: New.

Title of Collection: Impact Evaluation of Teacher and Leader Evaluation Systems.

OMB Control Number: Pending.

Agency Form Number(s): N/A.

Frequency of Responses: Once.

Affected Public: State, Local or Tribal Government.

Total Estimated Number of Annual Responses: 59.

Total Estimated Annual Burden Hours: 891.

Abstract: This information collection package requests clearance to recruit districts for a study of a performance evaluation system for principals and teachers. The study will provide important implementation and impact information on the kinds of performance evaluation systems currently discussed in Federal policy. Study findings will be presented in two reports, one scheduled for release in late 2014 and the other in late 2015.

Copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the ''Browse Pending Collections'' link and by clicking on link number 4758. When you access the information collection, click on ''Download Attachments'' to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Washington, DC 20202–4537. Requests may also be electronically mailed to *ICDocketMgr@ed.gov* or faxed to (202) 401–0920. Please specify the complete title of the information collection and OMB Control Number when making your request.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

[FR Doc. 2011–30696 Filed 11–28–11; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Public Meeting of the Technical Guidelines Development Committee.

SUMMARY: The Technical Guidelines Development Committee (TGDC) will meet in open session on Thursday, December 15, 2011 and Friday, December 16, 2011 at the National Institute of Standards and Technology (NIST) in Gaithersburg, Maryland.

DATES: The meeting will be held on Thursday, December 15, 2011, from 8:30 a.m. until 4:30 p.m., Eastern time (estimated based on speed of business), and Friday, December 16, 2011 from 8:30 a.m. to 3:30 p.m., Eastern time (estimated based on speed of business).

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology (NIST), 100 Bureau Drive, Building 101, Gaithersburg, Maryland 20899–8900. Members of the public wishing to attend the meeting must notify Mary Lou Norris or Angela Ellis by c.o.b. Thursday, December 8, 2011, per instructions under the

SUPPLEMENTARY INFORMATION section of this notice.

FOR FURTHER INFORMATION CONTACT: Nelson Hastings, NIST Voting Program, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–5237 or *nelson.hastings@nist.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the TGDC will meet Thursday, December 15, 2011 from 8:30 a.m. to 4:30 p.m., Eastern time, and Friday, December 16, 2011 from 8:30 a.m. to 3:30 p.m., Eastern time. Topics that will be discussed at the meeting include UOCAVA (Uniformed and Overseas Citizens Absentee Voting Act), Common Data Format, Usability and Accessibility, and Voluntary Voting System Guideline (VVSG) issues. The full meeting agenda will be posted in advance at *http://vote.nist.gov.* All sessions of this meeting will be open to the public.

The TGDC was established pursuant to 42 U.S.C. 15361, to act in the public interest to assist the Executive Director of the Election Assistance Commission (EAC) in the development of voluntary voting system guidelines. Details regarding the TGDC's activities are available at *http://vote.nist.gov.*

All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Anyone wishing to attend this meeting must register by c.o.b. Thursday, December 8, 2011, in order to attend. Please submit your name, time of arrival, email address and phone number to Mary Lou Norris or Angela Ellis, and they will provide you with instructions for admittance. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. Mary Lou Norris' email address is *marylou.norris@nist.gov,* and her phone number is (301) 975–2002. Angela Ellis' email address is *angela.ellis@nist.gov,* and her phone number is (301) 975–3881.

If you are in need of a disability accommodation, such as the need for Sign Language Interpretation, please contact Nelson Hastings by c.o.b. Friday, November 25, 2011. Nelson Hastings' contact information is given in the **FOR FURTHER INFORMATION CONTACT** section above.

Members of the public who wish to speak at this meeting may send a request to participate to Nelson Hastings by c.o.b. Tuesday, December 6, 2011. Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's affairs are invited to request a place on the agenda. On December 15, 2011, approximately 30 minutes will be reserved for public comments at the end of the open session. Speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be no more than 3 to 5 minutes each. Participants who are chosen will receive confirmation from the contact listed above that they were selected by 12 p.m. Eastern time on Friday, December 9, 2011.

The general public, including those who are not selected to speak, may submit written comments, which will be distributed to TGDC members so long as they are received no later than 12 p.m. Eastern time on Friday, December 9, 2011. All comments will also be posted on *http://vote.nist.gov.*

Mark A. Robbins,

General Counsel, U.S. Election Assistance Commission.

[FR Doc. 2011–30856 Filed 11–25–11; 4:15 pm]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Office of Electricity Delivery and Energy Reliability (OE), U.S. Department of Energy (DOE).

ACTION: Notice and Request for OMB Review and Comment.

SUMMARY: The Office of Electricity Delivery and Energy Reliability has submitted the form OE–417 ''Electric Emergency Incident and Disturbance Report'' to the Office of Management and Budget (OMB) for review and a three-year extension under the provisions of the Paperwork Reduction Act of 1995. The OE–417 is used to report electric emergency incidents and disturbances to the DOE. The Form OE–417 reports will enable the DOE to monitor electric emergency incidents and disturbances in the United States (including all 50 States, the District of Columbia, Puerto Rico, U.S. Virgin Islands, and the U.S. Territories) so that the Government may help prevent the physical or virtual disruption of the operation of any critical infrastructure.

DATES: Comments regarding this collection must be received on or before December 29, 2011. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, please advise the OMB Desk Officer of your intention to make a submission as soon as possible. The Desk Officer may be telephoned at (202) 395–4650.

ADDRESSES: Written comments should be sent to the:

DOE Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 1012, 735 17th Street, NW., Washington, DC 20503, (202) 395–4650.

And to:

Brian Copeland, Office of Electricity Delivery and Energy Reliability (Attn: Comments on OE–417 Electric Emergency Incident and Disturbance Report), OE–30, Forrestal Building, U.S. Department of Energy, Washington, DC 20585, *Brian.Copeland@hq.doe.gov*, (202) 586–1178.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Brian Copeland.

SUPPLEMENTARY INFORMATION: This information collection request contains: (1) OMB No. 1901–0288; (2) Information Collection Request Title: Electric Emergency Incident and Disturbance Report; (3) Type of Review: Revision and three-year extension; (4) Purpose: Form OE–417 collects information on electric emergency incidents and disturbances for DOE's use in fulfilling its overall national security and other energy management responsibilities. The information will also be used by DOE for analytical purposes. All electric utilities, including those that operate Control Area Operator functions and Reliability Authority functions, will be required to supply information when an incident or disturbance meets a reporting threshold. Since the pre-survey consultation notice was published, **Federal Register** notice 76 FR 35867, in line 11, the boxes entitled ''Physical'' and ''Cyber'' have been changed to ''Physical Attack'' and ''Cyber Event.''; (5) Annual Estimated Number of Respondents: 3.276; (6) Annual Estimated Number of Total Responses: 300; (7) Annual Estimated Number of Burden Hours: 7,227; (8) Annual Estimated Reporting and Recordkeeping Cost Burden: 0.

Statutory Authority: Section 13 of the Federal Energy Administration Act of 1974, codified at 15 U.S.C. 772.

Issued in Washington, DC.

Patricia A. Hoffman,

Assistant Secretary of Energy, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2011–30640 Filed 11–28–11; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. AD12–1–000, RC11–6–000, EL11–62–000]

Reliability Technical Conference, North American Electric Reliability Corporation, Public Service Commission of South Carolina and the South Carolina Office of Regulatory Staff; Notice of Amended Reliability Technical Conference Agenda

As announced in the Notice of Technical Conference issued on October 7, 2011, the Commission will hold a technical conference on Tuesday, November 29, 2011, from 1 p.m. to 5 p.m. and Wednesday, November 30, 2011, from 9 a.m. to 4 p.m. to explore the progress made on the priorities for addressing risks to reliability that were identified in earlier Commission technical conferences. The agenda for this conference has been amended and is attached. Commission members will participate in this conference.

Information on this event will be posted on the Calendar of Events on the Commission's Web site, *http://www.ferc.gov,* prior to the event. The conference will be transcribed. Transcripts will be available immediately for a fee from Ace Reporting Company (202) 347–3700 or 1–(800) 336–6646). A free webcast of this event is also available through *http://www.ferc.gov.* Anyone with Internet access who desires to listen to this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to the webcast. The Capitol Connection provides technical support for webcasts and offers the option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or call (703) 993–3100.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations, please send an email to *accessibility@ferc.gov* or call toll free 1–(866) 208–3372 (voice) or (202) 208–1659 (TTY), or send a FAX to (202) 208–2106 with the required accommodations.

For more information about this conference, please contact: Sarah McKinley, Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. (202) 502–8368. *sarah.mckinley@ferc.gov.*

Dated: November 22, 2011.

Kimberly D. Bose,

Secretary.

Reliability Technical Conference

Commissioner-Led Reliability Technical Conference

November 29, 2011
1 p.m.–5 p.m.
November 30, 2011
9 a.m.–4 p.m.

Agenda

November 29, 2011

1 p.m. Commissioners' Opening Remarks

1:20 p.m. Introductions Commissioner Cheryl LaFleur, Chair

1:25 p.m. Panel I: Identifying Priorities for NERC Activities

Presentations: NERC will be invited to provide an update on its priorities as identified in the February 8, 2011 Reliability Technical Conference. Panelists will be invited to express their general views on how NERC's prioritization tool has been working. Has NERC addressed concerns raised at the February 8, 2011 Reliability Technical Conference. Panelists will be asked to address some or all of the following:

a. What are the most critical reliability issues and/or standards development initiatives that needed to be addressed in 2011 and 2012? What is the status of the priorities identified by NERC at the February technical conference? Has NERC's prioritization tool been useful?

b. One of the priorities was improving the compliance and enforcement process. How is that being addressed?

c. What are the biggest challenges to addressing these priorities and/or completing these initiatives in an effective and timely manner? What next steps are appropriate to timely and effectively address the priorities discussed?

d. How do NERC and reliability standards development teams incorporate in new or re-ordered priorities regarding reliability standards into their work plans? How are emerging issues considered and are any becoming high priorities?

Panelists

- Gerry W. Cauley, President and Chief Executive Officer, North American Electric Reliability Corporation (NERC)
- Kevin Burke, Chairman, President and CEO, Consolidated Edison Inc., on behalf of Consolidated Edison and the Edison Electric Institute (EEI)
- Mike Smith, President and Chief Executive Officer, Georgia Transmission Corporation, on behalf of Georgia Transmission Corp. and the National Rural Electric Association (NRECA)
- John A. Anderson, President, Electricity Consumers Resource Council (ELCON)
- Allen Mosher, Senior Director of Policy Analysis and Reliability, American Public Power Association (APPA); NERC Standards Committee Chairman
- Deborah Le Vine, Director, System Operations, California Independent System Operator Corporation (CAISO)
- William J. Gallagher, NERC Member Representatives Committee Chairman; Retired CEO, Vermont Public Power Supply Authority
- Peter Fraser, Managing Director of Regulatory Policy, Ontario Energy Board

3:30 p.m. Panel II: Incorporating Lessons Learned Into a More Reliable Grid

Presentations: Panelists will address how lessons learned are incorporated into NERC priorities. Panelists will be asked to address some or all of the following:

a. How do lessons learned from events analysis get disseminated to industry?

b. How do NERC's non-standards processes such as the Industry Alerts, Recommendations, Event Analysis, Essential Actions, Lessons Learned and Compliance Application Notices interact with the reliability standards? To what extent do these processes aid in identifying important reliability matters that are not addressed under the existing Reliability Standards?

c. Is the alerts process getting the message out on issues of immediate importance

d. How do you gauge whether industry is appropriately implementing NERC alerts or lessons learned from an event analysis?

e. Is there a feedback loop into the Reliability Standards development process to determine if there is a gap in the standards? If so, how has that been working? If not, should there be?

Panelists

- Gerry W. Cauley, President and Chief Executive Officer, North American Electric Reliability Corporation
- Thomas J. Galloway, President and Chief Executive Officer, North American Transmission Forum
- Tom Burgess, Executive Director, Integrated System Planning and Development, FirstEnergy, on behalf of FirstEnergy and EEI
- Scott Helyer, Vice President, Transmission at Tenaska, on behalf of Electric Power Supply Association (EPSA)
- Mary Kipp, Senior Vice President, General Counsel and Chief Compliance Officer, El Paso Electric

Commissioner Closing Comments

November 30, 2011

9 a.m. Commissioners' Opening Remarks
9:20 a.m. Introductions Commissioner Cheryl LaFleur, Chair
9: 30 Remarks: Janet McCabe, Principal Deputy Assistant Administrator for Air and Radiation, U.S. Environmental Protection Agency
9:40 a.m. Panel III: Presentations and Discussion on the Current State of Processes for Identifying Unit-Specific Local or Regional Reliability Issues in Response to Final EPA Regulations

Presentations: Panelists will be asked to describe their local and regional processes for identifying unit-specific reliability issues in response to final EPA environmental requirements. Panelists should address the following broad questions in their presentations:

a. How should reliability aspects of EPA's proposed and final regulations be addressed? What local or regional processes are used to plan for emerging issues such as the EPA regulations? How are you incorporating the EPA regulations into this process?

b. What have you proposed to the EPA regarding an exemption process? Do you support the exemption process changes identified by the RTOs or other entities in comments to the EPA? Do you have any alternative proposals?

c. What market structures and tariff rules are used to address local and regional reliability issues that may arise from generation retirements potentially triggered by EPA regulations? Are any changes to market and tariff rules needed?

d. Do you have the right tools to identify any problems that may arise? Are there other process changes that could help address reliability-related requests for exemptions from the EPA regulations?

Panelists

- Mark Lauby, Vice President and Director of Reliability Assessment and Performance Analysis, North American Electric Reliability Corporation
- Michael Kormos, Senior Vice President of Operations, PJM Interconnection, L.L.C.
- Carl Monroe, Executive Vice President and Chief Operating Officer, Southwest Power Pool (SPP)
- Thomas F. Farrell II, Chairman, President & CEO—Dominion, on behalf of EEI
- Kathleen Barron, Vice President, Federal Regulatory Affairs and Policy, Exelon Corporation
- Anthony Topazi, Chief Operating Officer, Southern Company
- David Wright, Vice Chairman, South Carolina Public Service Commission
- Joshua Epel, Chairman, Colorado Public Utilities Commission

12 p.m. Lunch
12:45 p.m. Continuation of Panel III

Discussion with Commissioners: Open dialogue and questions and answers between Panel 1 and Commissioners.

2:15 p.m. Break
2:30 p.m. Panel IV: Discussion on multi-jurisdictional processes.

Presentations: Panelists will be asked to describe how they coordinate processes such as the state integrated resource planning with their reliability planning and the safety valve proposal. Panelists should address the following broad questions in their presentations:

a. What, if any role should the Commission or DOE play in studying replacement generation or other reliability solutions due to retirements? What role does the retail regulator, such as a state public utility commission or municipal authority play in forming your bulk power system reliability plans?

b. Do you support the exemption process changes identified by the RTOs or other entities in comments to the EPA? What role can the Commission play in evaluating individual requests under a safety-valve approach? Do you have any alternative proposals?

Panelists

- Patricia A. Hoffman, Assistant Secretary for Electricity & Infrastructure Reliability, U.S. Department of Energy
- Gerry W. Cauley, President and Chief Executive Officer, North American Electric Reliability Corporation (NERC)
- Nick Akins, CEO of American Electric Power (AEP), on behalf of AEP
- Clair J. Moeller, Vice President Transmission Asset Management, Midwest Independent Transmission System Operator, Inc. (MISO)
- Betty Ann Kane, Chairman, District of Columbia Public Service Commission
- Cheryl Roberto, Commissioner, Public Utilities Commission of Ohio
- Eric Baker, President and Chief Executive Officer, Wolverine Electric Power Cooperative
- Debra Raggio, Vice President, Government and Regulatory Affairs, Assistant General Counsel, GenOn Energy, Inc.

Commissioner Closing Comments

[FR Doc. 2011–30671 Filed 11–28–11; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP12–15–000]

Cameron LNG, LLC; Notice of Application

Take notice that on November 4, 2010, Cameron LNG, LLC (Cameron), 101 Ash Street, San Diego, California 92101, filed in Docket No. CP12–15–000, an application pursuant to section 3(a) of the Natural Gas Act (NGA) for authority to construct and operate a boil-off gas (BOG) liquefaction system at its LNG import terminal in Cameron Parish, Louisiana. Specifically, Cameron proposes to install facilities consisting of a closed loop refrigeration system at the terminal to liquefy BOG and return such gas in the form of LNG to its storage tanks. Cameron states that the project will not require any new LNG

storage facilities and that any new LNG piping will be very limited, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, call (202) 502–8659 or TTY, (202) 208–3676.

Any questions regarding this application should be directed to William D. Rapp, 101 Ash Street, San Diego, CA 92101, phone (619) 699–5050 or email: *wrapp@sempraglobal.com.*

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all Federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the below listed comment date, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

Motions to intervene, protests and comments may be filed electronically via the internet in lieu of paper; see, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. The Commission strongly encourages electronic filings.

Comment Date: December 12, 2011.

Dated: November 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–30691 Filed 11–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–33–000.

Applicants: Ridgeline Alternative Energy, LLC.

Description: Joint Application of Ridgeline Alternative Energy, LLC; Rockland Wind Farm LLC; and Atlantic Power Corporation.

Filed Date: 11/17/11.

Accession Number: 20111117–5164.

Comments Due: 5 p.m. ET 12/8/11.

Docket Numbers: EC12–34–000.

Applicants: Bishop Hill Energy LLC.

Description: Application for Authorization under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action of Bishop Hill Energy LLC.

Filed Date: 11/18/11.

Accession Number: 20111118–5093.

Comments Due: 5 p.m. ET 12/9/11.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3876–003; ER11–2044–004; ER10–2611–002.

Applicants: MidAmerican Energy Company, Cordova Energy Company LLC, Saranac Power Partners, L.P.

Description: Triennial market update for Central Region of MidAmerican Energy Company, *et al.*

Filed Date: 11/17/11.

Accession Number: 20111117–5170.

Comments Due: 5 p.m. ET 12/8/11.

Docket Numbers: ER12–430–000.

Applicants: Southwest Power Pool, Inc.

Description: Revisions to Attachment AE—Review and Assessment of Resource Plans to be effective 1/17/2012.

Filed Date: 11/17/11.

Accession Number: 20111117–5128.

Comments Due: 5 p.m. ET 12/8/11.

Docket Numbers: ER12–431–000.

Applicants: NedPower Mount Storm, LLC.

Description: Compliance Filing—Section X and XI to be effective 11/17/2011.

Filed Date: 11/17/11.

Accession Number: 20111117–5160.

Comments Due: 5 p.m. ET 12/8/11.

Docket Numbers: ER12–432–000.

Applicants: Puget Sound Energy, Inc.

Description: Vantage Wind LGIA to be effective 10/1/2011.

Filed Date: 11/17/11.

Accession Number: 20111117–5161.

Comments Due: 5 p.m. ET 12/8/11.

Docket Numbers: ER12–433–000.

Applicants: Energy Exchange Direct, LLC.

Description: Energy Exchange Direct, LLC Electric Tariff Original Volume No 1 to be effective 12/1/2011.

Filed Date: 11/18/11.

Accession Number: 20111118–5000.

Comments Due: 5 p.m. ET 12/9/11.

Docket Numbers: ER12–434–000.

Applicants: MidAmerican Energy Company.

Description: 2nd Revised Service Agreement 385—CB4 Transmission to be effective 11/1/2011.

Filed Date: 11/18/11.

Accession Number: 20111118–5037.

Comments Due: 5 p.m. ET 12/9/11.

Docket Numbers: ER12–435–000.

Applicants: Public Service Company of Colorado.

Description: 20111118_JOA Changes to be effective 1/17/2012.

Filed Date: 11/18/11.

Accession Number: 20111118–5102.

Comments Due: 5 p.m. ET 12/9/11.

Docket Numbers: ER12–436–000.

Applicants: Public Service Company of Colorado.

Description: 2011–11–18_PSCo–SPS–Lamar–Tie Rate–Filing to be effective 1/17/2012.

Filed Date: 11/18/11.

Accession Number: 20111118–5106.

Comments Due: 5 p.m. ET 12/9/11.

Docket Numbers: ER12–437–000.

Applicants: Northern States Power Company, a Wisconsin corporation.

Description: 20111118_JOA COC Filing to be effective 1/17/2012.

Filed Date: 11/18/11.

Accession Number: 20111118–5116.

Comments Due: 5 p.m. ET 12/9/11.

Docket Numbers: ER12–438–000.

Applicants: Northern States Power Company, a Minnesota corporation.

Description: 20111118_JOA COC Filing to be effective 1/17/2012.

Filed Date: 11/18/11.

Accession Number: 20111118–5117.

Comments Due: 5 p.m. ET 12/9/11.

Docket Numbers: ER12–439–000.

Applicants: Southwestern Public Service Company.

Description: 20111118_JOA COC Filing to be effective 1/17/2012.

Filed Date: 11/18/11.

Accession Number: 20111118–5119.

Comments Due: 5 p.m. ET 12/9/11.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 18, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–30702 Filed 11–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC12–35–000.

Applicants: Arizona Solar One LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act for the Disposition of Jurisdictional Facilities, Request for Expedited Consideration and Confidential Treatment of Arizona Solar One LLC.

Filed Date: 11/18/11.

Accession Number: 20111118–5200.

Comments Due: 5 p.m. ET 12/9/11.

Docket Numbers: EC12–36–000.

Applicants: Cross-Sound Cable Company, LLC, Brookfield Infrastructure Corporation.

Description: Application for Authorization under Section 203 of the Federal Power Act, and for Expedited Consideration, Confidential Treatment and Waivers of Cross-Sound Cable Company, LLC, *et al.*

Filed Date: 11/18/11.

Accession Number: 20111118–5203.

Comments Due: 5 p.m. ET 12/9/11.

Docket Numbers: EC12–37–000.

Applicants: MidAmerican Energy Holdings Company, Elk Wind Energy LLC.

Description: Application for Authorization of Transaction Under Section 203 of the Federal Power Act and Request for Expedited Consideration of Elk Wind Energy LLC, *et al.*

Filed Date: 11/18/11.

Accession Number: 20111118–5205.

Comments Due: 5 p.m. ET 12/9/11.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–4665–001.

Applicants: North Branch Resources, LLC.

Description: Supplement to Category 1 Status Request to be effective 11/18/2011.

Filed Date: 11/18/11.

Accession Number: 20111118–5159.

Comments Due: 5 p.m. ET 12/9/11.

Docket Numbers: ER12–440–000.

Applicants: Bishop Hill Energy LLC.

Description: Assignment, Co-Tenancy, and Shared Facilities Agreement to be effective 12/21/2011.

Filed Date: 11/18/11.

Accession Number: 20111118–5130.

Comments Due: 5 p.m. ET 12/9/11.

Docket Numbers: ER12–441–000.

Applicants: Bishop Hill Energy II LLC.

Description: Assignment, Co-Tenancy, and Shared Facilities Agreement to be effective 12/21/2011.

Filed Date: 11/18/11.

Accession Number: 20111118–5131.

Comments Due: 5 p.m. ET 12/9/11.

Docket Numbers: ER12–442–000.

Applicants: Bishop Hill Energy III LLC.

Description: Assignment, Co-Tenancy, and Shared Facilities Agreement to be effective 12/21/2011.

Filed Date: 11/18/11.

Accession Number: 20111118–5132.

Comments Due: 5 p.m. ET 12/9/11.

Docket Numbers: ER12–443–000.

Applicants: Southwest Power Pool, Inc.

Description: 2273 Western Farmers Electric Coop., Inc Contingency Connection Agreement to be effective 10/19/2011.

Filed Date: 11/18/11.

Accession Number: 20111118–5157.

Comments Due: 5 p.m. ET 12/9/11.

Docket Numbers: ER12–444–000.

Applicants: Southwest Power Pool, Inc.

Description: 1148R14 American Electric Power Service Corporation NITSA NOA to be effective 11/1/2011.

Filed Date: 11/18/11.

Accession Number: 20111118–5160.

Comments Due: 5 p.m. ET 12/9/11.

Docket Numbers: ER12–445–000.

Applicants: PJM Interconnection, LLC.

Description: Revisions to the PJM Tariff Schedule 12 Appendices re the RTEP to be effective 2/16/2012.

Filed Date: 11/18/11.

Accession Number: 20111118–5167.

Comments Due: 5 p.m. ET 12/19/11.

Docket Numbers: ER12–446–000.

Applicants: PJS Capital LLC.

Description: PJS Capital, LLC Electric Tariff Original Volume No 1 Cancellation Notice to be effective 12/1/2011.

Filed Date: 11/18/11.

Accession Number: 20111118–5193.
Comments Due: 5 p.m. ET 12/9/11.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 21, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–30701 Filed 11–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 13022–002; 14265–000]

Barren River Lake Hydro LLC; FFP Project 94 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 1, 2011, Barren River Lake Hydro LLC (Barren Hydro), and FFP Project 94 LLC (FFP 94) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Barren River Lake Dam, located on the Barren River in Allen County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Barren Hydro's Project No. 13022–002 would consist of: (1) Lining the existing outlet structure with a 280-foot-long, 14-foot-diameter steel penstock; (2) a new gate and bifurcation where the penstock exits the dam; (3) a powerhouse containing one generating unit with a total capacity of 6.8 megawatts (MW); (4) a 110-foot-long, 80-foot-wide tailrace; and (5) a proposed 0.8-mile-long, 12.5 kilo-volt (KV) transmission line to an existing transmission line. The proposed project would have an average annual generation of 24.2 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Barren River Lake Dam, as directed by the Corps.

Applicant Contact: Mr. Brent L. Smith, Symbiotics LLC, 371 Upper Terrace, Suite 2, Bend, OR 97702. (541) 330–8779.

FFP 94's Project No. 14265–000 would consist of: (1) A 50-foot by 30-foot reinforced concrete bifurcation structure containing three vertical slide gates will be constructed at the end of the existing outlet conduit; (2) a 420-foot-long, 10.5-foot-diameter penstock will be connected to the new bifurcation structure; (3) a powerhouse, located on the east side of the dam, containing one generating unit with a total capacity of 4.8 MW; (4) a 50-foot-long, 130-foot-wide tailrace; (5) a 4.16/69 KV substation; (6) a 9.12-mile-long, 69 kV transmission line and (7) a new 330-foot-long access road. The proposed project would have an average annual generation of 16.80 GWh, and operate run-of-river utilizing surplus water from the Barren River Lake Dam, as directed by the Corps.

Applicant Contact: Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

FERC Contact: Michael Spencer, michael.spencer@ferc.gov, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13022–002, or P–14265–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 22, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–30675 Filed 11–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14261–000; 14268–000; 14277–000; 14281–000]

Lock Hydro Friends Fund XVIII; Upper Hydroelectric LLC; FFP Project 95 LLC; Riverbank Hydro No. 25 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 1, 2011, Lock Hydro Friends Fund XVIII (Lock Hydro), Upper Hydroelectric LLC (Upper Hydro), Riverbank Hydro No. 25 LLC (Riverbank), and FFP Project 95 LLC (FFP 95) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) John C. Stennis Lock & Dam, located on the Tombigbee River in Lowndes County, Mississippi. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Lock Hydro's Project No. 14261–000 would consist of: (1) One lock frame module, the frame module will be placed in a new conduit and contain five generating units with a total combined capacity of 10.0 megawatts (MW); (2) a new switchyard containing

a transformer; and (3) a proposed 1.9-mile-long, 34.5 kilo-volt (kV) transmission line to an existing power line. The proposed project would have an average annual generation of 52.560 GWh, and operate run-of-river utilizing surplus water from the John C. Stennis Lock & Dam, as directed by the Corps.

Applicant Contact: Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566.

Upper Hydro's Project No. 14268–000 would consist of: (1) a 250-foot-long, 100-foot-wide headrace channel; (2) a powerhouse containing two generating units with a total capacity of 15.0 MW; (3) a 275-foot-long, 100-foot-wide tailrace; (4) a 0.5-mile-long, 34.0 kV transmission line. The proposed project would have an average annual generation of 72.0 GWh, and operate run-of-river utilizing surplus water from the John C. Stennis Lock & Dam, as directed by the Corps.

Applicant Contact: Mr. Douglas Spaulding, Nelson Energy LLC, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426. (952) 544–8133.

FFP 95's Project No. 14277–000 would consist of: (1) An 160-foot-long, 100-foot-wide approach channel; (2) a powerhouse, located on the west side of the dam, containing one generating unit with a total capacity of 15.0 MW; (3) a 190-foot-long, 50-foot-wide tailrace; (4) a 4.16/46 KV substation; and (5) a 1.5-mile-long, 46 kV transmission line. The proposed project would have an average annual generation of 59.9 GWh, and operate run-of-river utilizing surplus water from the John C. Stennis Lock & Dam, as directed by the Corps.

Applicant Contact: Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

Riverbank's Project No. 14281–000 would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing two generating units with a total capacity of 13.25 MW; (4) a tailrace structure; and (5) a 2.0-mile-long, 46 KV transmission line. The project would have an estimated average annual generation of 52.4 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the John C. Stennis Lock & Dam, as directed by the Corps.

Applicant Contact: Mr. Vincent Lamarra, Riverbank Power USA, 975 South State Highway 89/91, Logan, UT 84321. (435) 752–2580.

FERC Contact: Michael Spencer, *michael.spencer@ferc.gov*, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14261–000, P–14268–000, 14277–000, or P–14281–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 22, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–30679 Filed 11–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 13005–002; 14278–000]

Oliver Hydro LLC; FFP Project 97 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 1, 2011, Oliver Hydro LLC (Oliver Hydro), and FFP Project 97 LLC (FFP 97) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) William Bacon Oliver Lock & Dam, located on the Black Warrior River in Tuscaloosa County, Alabama. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Oliver Hydro's Project No. 13005–002 would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing two generating units with a total capacity of 11.72 megawatts (MW); (4) a 195-foot-long, 72-foot-wide tailrace; and (5) a proposed 1.6-mile-long, 25 kilo-volt (KV) transmission line to an existing transmission facility. The proposed project would have an average annual generation of 47.8 GWh, and operate run-of-river utilizing surplus water from the William Bacon Oliver Lock & Dam, as directed by the Corps.

Applicant Contact: Mr. Brent L. Smith, Symbiotics LLC, 371 Upper Terrace, Suite 2, Bend, OR 97702. (541) 330–8779.

FFP 97's Project No. 14278–000 would consist of: (1) An 320-foot-long, 120-foot-wide approach channel; (2) a powerhouse, located on the south side of the dam, containing four generating units with a total capacity of 16.4 MW; (3) a 320-foot-long, 140-foot-wide tailrace; (4) a 4.16/115 KV substation; and (5) a 1.0-mile-long, 115 KV transmission line. The proposed project would have an average annual generation of 65.8.0 GWh, and operate run-of-river utilizing surplus water from the William Bacon Oliver Lock & Dam, as directed by the Corps.

Applicant Contact: Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

FERC Contact: Michael Spencer, *michael.spencer@ferc.gov*, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://*

www.ferc.gov/docs-filing/ecomment.asp. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13005–002, or P–14278–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 22, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–30672 Filed 11–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 13213–002; 14271–000]

Lock 14 Hydro Partners; FFP Project 106 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 1, 2011, Lock 14 Hydro Partners (Lock 14), and FFP Project 106 LLC (FFP 106) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Kentucky River Lock and Dam No. 14, located on the Kentucky River in Lee County, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Lock 14's Project No. 13213–002 would consist of: (1) A powerhouse constructed in an abandoned lock, containing four generating units with a total capacity of 2.64 megawatts (MW); and (2) a 1,000-foot-long, 12.47 kilo-volt (KV) transmission line. The project would have an estimated average annual generation of 11.0 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Kentucky River Lock and Dam No. 14, as directed by the Corps.

Applicant Contact: Mr. David Brown Kinloch, Soft Energy Associates, 414 S. Wenzel Street, Louisville KY 40204. (502) 589–0975.

FFP 106's Project No. 14271–000 would consist of: an 340-foot-long, 50-foot-wide approach channel; (1) A powerhouse, located on the west side of the dam, containing one generating unit with a total capacity of 4.0 MW; (2) a 120-foot-long, 60-foot-wide tailrace; (3) a 4.16/69 KV substation; and (4) a 0.6-mile-long, 69 kV transmission line. The proposed project would have an average annual generation of 16.0 GWh, and operate run-of-river utilizing surplus water from the Kentucky River Lock and Dam No. 14, as directed by the Corps.

Applicant Contact: Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

FERC Contact: Michael Spencer, *michael.spencer@ferc.gov*, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13213–002, or P–14271–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 22, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–30676 Filed 11–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14260–000; 14264–000; 14267–000; 14273–000]

Lock Hydro Friends Fund XII; BOST2 LLC; Riverbank Hydro No. 21 LLC; FFP Project 96 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 1, 2011, Lock Hydro Friends Fund XII (Lock Hydro), BOST2 LLC (BOST2), Riverbank Hydro No. 21 LLC (Riverbank), and FFP Project 96 LLC (FFP 96) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) A. I. Selden Lock & Dam, located on the Black Warrior River in Green and Hale Counties, Alabama. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Lock Hydro's Project No. 14260–000 would consist of: (1) One lock frame module, the frame module will be placed in a new conduit and contain five generating units with a total combined capacity of 10.0 megawatts (MW); (2) a new switchyard containing a transformer; and (3) a proposed 2.3-mile-long, 34.5 kilo-volt (kV) transmission line to an existing power line. The proposed project would have an average annual generation of 52.560 GWh, and operate run-of-river utilizing surplus water from the A. I. Selden Lock & Dam, as directed by the Corps.

Applicant Contact: Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566.

BOST2's Project No. 14264–000 would consist of: (1) A 250-foot-long, 100-foot-wide headrace channel; (2) a

powerhouse containing two generating units with a total capacity of 18.0 MW; (3) a 275-foot-long, 100-foot-wide tailrace; (4) a 3.0-mile-long, 34.0 kV transmission line. The proposed project would have an average annual generation of 87.0 GWh, and operate run-of-river utilizing surplus water from the A. I. Selden Lock & Dam, as directed by the Corps.

Applicant Contact: Mr. Douglas Spaulding, Nelson Energy LLC, 8441 Wayzata Blvd., Suite 101, Golden Valley, MN 55426. (952) 544–8133.

Riverbank's Project No. 14267–000 would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing two generating units with a total capacity of 10.7 MW; (4) a tailrace structure; and (5) a 3.0-mile-long, 46 KV transmission line. The project would have an estimated average annual generation of 41.4 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the A. I. Selden Lock & Dam, as directed by the Corps.

Applicant Contact: Mr. Vincent Lamarra, Riverbank Power USA, 975 South State Highway 89/91, Logan, UT 84321. (435) 752–2580.

FFP 96's Project No. 14273–000 would consist of: (1) An 380-foot-long, 90-foot-wide approach channel; (2) a powerhouse, located on the northwest side of the dam, containing two generating units with a total capacity of 15.2 MW; (3) a 340-foot-long, 130-foot-wide tailrace; (4) a 4.16/115 KV substation; and (5) a 2.9-mile-long, 115 kV transmission line. The proposed project would have an average annual generation of 60.7 GWh, and operate run-of-river utilizing surplus water from the A. I. Selden Lock & Dam, as directed by the Corps.

Applicant Contact: Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

FERC Contact: Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14260–000, P–14264–000, 14267–000, or P–14273–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 22, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–30678 Filed 11–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14275–000; 14279–000; 14282–000]

FFP Project 91 LLC; Riverbank Hydro No. 23 LLC; Lock Hydro Friends Fund III; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 1, 2011, FFP Project 91 LLC (FFP 91), Riverbank Hydro No. 23 LLC (Riverbank), and Lock Hydro Friends Fund III (Lock Hydro), filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Kentucky River Lock & Dam No. 10, located on the Kentucky River in Clark and Madison Counties, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

FFP 91's Project No. 14275–000 would consist of: (1) An 360-foot-long, 50-foot-wide approach channel; (2) a powerhouse, located on the west side of the dam, containing one generating units with a total capacity of 6.3 MW; (3) a 230-foot-long, 55-foot-wide tailrace; (4) a 4.16/69 KV substation; and (5) a 0.5-mile-long, 69 KV transmission line. The proposed project would have an average annual generation of 25.1 GWh, KV operate run-of-river utilizing surplus water from Kentucky River Lock & Dam No. 10, as directed by the Corps.

Applicant Contact: Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

Riverbank's Project No. 14279–000 would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing two generating units with a total capacity of 4.2 MW; (4) a tailrace structure; and (5) a 0.16-mile-long, 25 KV transmission line. The project would have an estimated average annual generation of 21.0 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 10, as directed by the Corps.

Applicant Contact: Mr. Vincent Lamarra, Riverbank Power USA, 975 South State Highway 89/91, Logan, UT 84321. (435) 752–2580.

Lock Hydro's Project No. 14282–000 would consist of: (1) Increasing the existing dam height by four feet to increase the reservoir level; (2) a powerhouse constructed in an abandoned lock containing four generating units with a total combined capacity of 4.0 megawatts (MW); (3) a new switchyard containing a transformer; and (4) a proposed 0.8-mile-long, 34.5 kilo-volt (KV) transmission line to an existing power line. The proposed project would have an average annual generation of 22.776 GWh, and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 10, as directed by the Corps.

Applicant Contact: Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566.

FERC Contact: Michael Spencer, *michael.spencer@ferc.gov*, (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and

competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp*. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp*. You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–14275–000, 14279–000, or P–14282–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 22, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–30681 Filed 11–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14262–000; 14276–000; 14280–000]

Lock Hydro Friends Fund VIII, FFP Project 92 LLC, Riverbank Hydro No. 24 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 1, 2011, Lock Hydro Friends Fund VIII (Lock Hydro), FFP Project 92 LLC (FFP 92), and Riverbank Hydro No. 24 LLC (Riverbank), filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Kentucky River Lock & Dam No. 11, located on the Kentucky River in Estill and Madison Counties, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Lock Hydro's Project No. 14262–000 would consist of: (1) Increase the existing dam height by four feet to increase the reservoir level; (2) a powerhouse constructed in an abandoned lock, containing four generating units with a total combined capacity of 4.0 megawatts (MW); (3) a new switchyard containing a transformer; and (4) a proposed 1.2-mile-long, 25.0 kilo-volt (kV) transmission line to an existing power line. The proposed project would have an average annual generation of 22.776 GWh, and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 11, as directed by the Corps.

Applicant Contact: Mr. Wayne F. Krouse, Hydro Green Energy, 5090 Richmond Avenue #390, Houston, TX 77056. (877) 556–6566.

FFP 92's Project No. 14276–000 would consist of: (1) An 350-foot-long, 50-foot-wide approach channel; (2) a powerhouse, located on the south side of the dam, containing one generating units with a total capacity of 4.9 MW; (3) a 280-foot-long, 70-foot-wide tailrace; (4) a 4.16/69 KV substation; and (5) a 4.5-mile-long, 69 kV transmission line. The proposed project would have an average annual generation of 19.5 GWh, and operate run-of-river utilizing surplus water from Kentucky River Lock & Dam No. 11, as directed by the Corps.

Applicant Contact: Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

Riverbank's Project No. 14280–000 would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing two generating units with a total capacity of 4.6 MW; (4) a tailrace structure; and (5) a 2.0-mile-long, 25 KV transmission line. The project would have an estimated average annual generation of 21.3 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Kentucky River Lock & Dam No. 11, as directed by the Corps.

Applicant Contact: Mr. Vincent Lamarra, Riverbank Power USA, 975 South State Highway 89/91, Logan, UT 84321. (435) 752–2580.

FERC Contact: Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14262–000, 14276–000, or P–14280–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 22, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–30680 Filed 11–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 13214–002; 14274–000]

Lock 12 Hydro Partners; FFP Project 107 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 1, 2011, Lock 12 Hydro Partners (Lock 12), and FFP Project 107 LLC (FFP 107) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Kentucky River Lock and Dam No. 12, located on the Kentucky River in Estill County, Kentucky. The sole purpose of a

preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Lock 12's Project No. 13214–002 would consist of: (1) A powerhouse constructed in an abandoned lock, containing four generating units with a total capacity of 2.64 megawatts (MW); and (2) a 1,500-foot-long, 12.47 kilo-volt (KV) transmission line. The project would have an estimated average annual generation of 11.0 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Kentucky River Lock and Dam No. 12, as directed by the Corps.

Applicant Contact: Mr. David Brown Kinloch, Soft Energy Associates, 414 S. Wenzel Street, Louisville KY 40204. (502) 589–0975.

FFP 107's Project No. 14274–000 would consist of: a 400-foot-long, 50-foot-wide approach channel; (1) A powerhouse, located on the west side of the dam, containing one generating unit with a total capacity of 4.2 MW; (2) a 250-foot-long, 60-foot-wide tailrace; (3) a 4.16/69 KV substation; and (4) a 0.15-mile-long, 69 kV transmission line. The proposed project would have an average annual generation of 16.8 GWh, and operate run-of-river utilizing surplus water from the Kentucky River Lock and Dam No. 12, as directed by the Corps.

Applicant Contact: Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

FERC Contact: Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13214–002, or P–14274–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 22, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–30677 Filed 11–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 14269–000; 14270–000]

Riverbank Hydro No. 22 LLC; FFP Project 93 LLC; Notice of Competing Preliminary Permit Applications Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On September 1, 2011, Riverbank Hydro No. 22 LLC (Riverbank), and FFP Project 93 LLC (FFP 93) filed preliminary permit applications, pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of a hydropower project at the U.S. Army Corps of Engineers' (Corps) Green River Lock & Dam No. 5, located on the Green River in Butler and Warren Counties, Kentucky. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

Riverbank's Project No. 14269–000 would consist of: (1) A forebay; (2) an intake structure; (3) a powerhouse containing two generating units with a total capacity of 3.8 megawatts (MW); (4) a tailrace structure; and (5) a 0.25-mile-long, 25 kilo-volt (KV) transmission line. The project would have an estimated average annual generation of 17.8 gigawatt-hours (GWh), and operate run-of-river utilizing surplus water from the Green River Lock & Dam No. 5, as directed by the Corps.

Applicant Contact: Mr. Vincent Lamarra, Riverbank Power USA, 975 South State Highway 89/91, Logan, UT 84321. (435) 752–2580.

FFP 93's Project No. 14270–000 would consist of: (1) An 680-foot-long, 50-foot-wide approach channel; (2) a powerhouse, located on the north side of the dam, containing one generating units with a total capacity of 5.3 MW; (3) a 210-foot-long, 90-foot-wide tailrace; (4) a 4.16/34.5 KV substation; and (5) a 1.0-mile-long, 34.5 kV transmission line. The proposed project would have an average annual generation of 26.7 GWh, and operate run-of-river utilizing surplus water from the Green River Lock & Dam No. 5, as directed by the Corps.

Applicant Contact: Ms. Ramya Swaminathan, Free Flow Power Corp., 239 Causeway Street, Suite 300, Boston, MA 02114. (978) 283–2822.

FERC Contact: Michael Spencer, *michael.spencer@ferc.gov,* (202) 502–6093.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14269–000, or P–14270–000) in the docket number field to access the

document. For assistance, contact FERC Online Support.

Dated: November 22, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–30673 Filed 11–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. PR11–92–001]

Enterprise Texas Pipeline LLC; Notice of Compliance Filing

Take notice that on November 22, 2011, Enterprise Texas Pipeline LLC (Enterprise Texas) filed a revised Statement of Operating Conditions to comply with a Delegated letter order issued November 10, 2011.

Any person desiring to participate in this rate filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the date as indicated below. Anyone filing an intervention or protest must serve a copy of that document on the Applicant. Anyone filing an intervention or protest on or before the intervention or protest date need not serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 7 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on Tuesday, December 6, 2011.

Dated: November 22, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–30670 Filed 11–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–161–000]

Tennessee Gas Pipeline Company; Notice of Availability of the Environmental Assessment for the Proposed Northeast Upgrade Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Northeast Upgrade Project (Project) proposed by Tennessee Gas Pipeline Company (TGP) in the above-referenced docket. TGP requests authorization to construct and operate certain pipeline and compressor facilities in Pennsylvania and New Jersey in order to expand the natural gas delivery capacity to the northeast region of the United States by up to 636,000 dekatherms per year.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The U.S. Fish and Wildlife Service and U.S. Army Corps of Engineers participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The proposed Project includes the following facilities:

- Installation of approximately 40.3 miles of new 30-inch-diameter pipeline loop [1] in five separate segments in Bradford, Wayne, and Pike Counties, Pennsylvania; and Sussex, Passaic, and Bergen Counties, New Jersey;
- Modifications of four existing compressor stations in Bradford, Susquehanna, and Pike Counties, Pennsylvania; and Sussex County, New Jersey;
- Abandonment of an existing meter station and construction of a new meter station in Bergen County, New Jersey;
- Installation of associated appurtenant aboveground facilities including mainline valves and pig [2] launchers and receivers; and
- Use of contractor/pipe yards and access roads.

The EA has been placed in the public files of the FERC and is available for public viewing on the FERC's Web site at *http://www.ferc.gov* using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; libraries in the Project area; and parties to this proceeding.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before December 21, 2011.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances, please reference the Project docket number (CP11–161–000) with your submission. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You may file your comments electronically by using the *eComment* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to

[1] A loop is a segment of pipe that is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the system.

[2] A pig is an internal tool that can be used to clean and dry a pipeline and/or to inspect it for damage or corrosion.

Documents and Filings. An eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing''; or

(3) You may file a paper copy of your comments at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Although your comments will be considered by the Commission, simply filing comments will not serve to make the commenter a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[3] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (*i.e.,* CP11–161). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

[3] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Dated: November 21, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–30692 Filed 11–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–458–000]

Quantum Choctaw Power, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Quantum Choctaw Power, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is December 12, 2011.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: November 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–30703 Filed 11–28–11; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14314–000]

Francis Walter Hydro, LLC; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

On November 1, 2011, Francis Walter Hydro, LLC, filed an application for a preliminary permit, pursuant to section 4(f) of the Federal Power Act (FPA), proposing to study the feasibility of hydropower at the U.S. Army Corps of Engineers (Corps) Francis E. Walter Dam located on the Lehigh River, in Luzerne County, Pennsylvania. The sole purpose of a preliminary permit, if issued, is to grant the permit holder priority to file a license application during the permit term. A preliminary permit does not authorize the permit holder to perform any land-disturbing activities or otherwise enter upon lands or waters owned by others without the owners' express permission.

The proposed Francis E. Walter Hydroelectric Project would consist of the following: (1) A 600-foot-long, 16-foot-diameter steel penstock attached to the existing outlet; (2) a concrete powerhouse 50 feet long by 75 feet wide; (3) two 4.5-megawatt (MW)

generators for a total installed capacity of 9.0 MW; (4) a tailrace channel to direct flow back to the Lehigh River; (5) a proposed 0.5-mile-long, 12.4-kilovolt transmission line interconnecting with an existing Pennsylvania Power and Light Corporation distribution line; and (6) appurtenant facilities. The estimated annual generation of the project would be 26.0 gigawatt-hours.

Applicant Contact: Mr. Vincent Lamarra, Symbiotics LLC, 975 South State Highway 89/91, Logan, Utah 84321; *phone:* (435) 752–2580.

FERC Contact: Tim Looney; phone: (202) 502–6096.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Competing applications and notices of intent must meet the requirements of 18 CFR 4.36. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at 1–(866) 208–3676, or for TTY, (202) 502–8659. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and seven copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

More information about this project, including a copy of the application, can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–14314–000) in the docket number field to access the document. For assistance, contact FERC Online Support.

Dated: November 14, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–30693 Filed 11–28–11; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2011–0824; FRL–9498–1]

Agency Information Collection Activities; Proposed Collection; Comment Request; Application for Registration of Pesticide-Producing and Device-Producing Establishments (EPA Form 3540–8) and Pesticide Report for Pesticide-Producing and Device-Producing Establishments (EPA Form 3540–16)

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on May 31, 2012. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before January 30, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OECA–2011–0824, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: docket.oeca@epa.gov.*
- *Fax:* (202) 566–1511.
- *Mail:* Enforcement and Compliance Docket and Information Center (ECDIC), Environmental Protection Agency, EPA Docket Center (EPA/DC), Mailcode: 2201T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* Enforcement and Compliance Docket and Information Center (ECDIC), Environmental Protection Agency, EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. Such deliveries are only accepted during the Docket Center's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OECA–2011–0824. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT: Michelle Stevenson, Office of Compliance, Monitoring, Assistance, and Media Programs Division, Pesticides, Waste & Toxics Branch (2225A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; *telephone number:* (202) 564–4203; *fax number:* (202) 564–0085; *email: stevenson.michelle@epa.gov.*

SUPPLEMENTARY INFORMATION:

How can I access the docket and/or submit comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OECA2011–0824, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket and Information Center (ECDIC), in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone

number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket and Information Center Docket is (202) 566–1752.

Use *http://www.regulations.gov* to obtain a copy of the draft co1lection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What information is EPA particularly interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act (PRA), EPA is soliciting comments and information to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information wi1l have practical utility;

(2) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What should I consider when I prepare my comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by EPA, be sure to identify the Docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What information collection activity or ICR does this apply to?

Affected entities: Entities potentially affected by this action are those which produce pesticides, active ingredients or devices.

Title: Agency Information Collection Activities; Proposed Collection; Comment Request; Application for Registration of Pesticide-Producing and Device-Producing Establishments (EPA Form 3540–8) and Pesticide Report for Pesticide-Producing and Device-Producing Establishments (EPA Form 3540–16).

ICR numbers: EPA ICR No. 0160.10, OMB Control No. 2070–0078.

ICR status: This ICR is currently scheduled to expire on May 31, 2012. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Section 7(a) requires that any person who produces pesticides, active ingredients or devices subject to the Act must register with the Administrator of EPA the establishment in which the pesticide, active ingredient or device is produced. This section further requires that application for registration of any establishment shall include the name and address of the establishment and of the producer who operates such an establishment. EPA Form 3540–8, Application for Registration of Pesticide-Producing and Device-Producing Establishments, is used to collect the establishment registration information required by this section.

FIFRA Section 7(c) requires that any producer operating an establishment registered under Section 7 report to the Administrator within 30 days after it is registered, and annually thereafter by March 1st for certain pesticide or device production and sales or distribution information. The producers must report which types and amounts of pesticides, active ingredients, or devices are currently being produced, were produced during the past year, sold or distributed in the past year. The supporting regulations at 40 CFR Part 167 provide the requirements and time schedules for submitting production information. EPA Form 3540–16, Pesticide Report for Pesticide-Producing and Device-Producing Establishments, is used to collect the pesticide production information required by Section 7(c) of FIFRA.

Establishment registration information, collected on EPA Form 3540–8, is a one-time requirement for all pesticide-producing and device-producing establishments. Pesticide and device production information, reported on EPA Form 3540–16, is required to be submitted within 30 days after the company is notified of their pesticide-producing or device-producing establishment number, and annually thereafter on or before March 1st.

Burden Statement: The average annual burden to the industry over the next three years is estimated to be 2 person hours per response.

Respondents/Affected Entities: 13,830.

Estimated Number of Respondents: 13,830.

Frequency of Response: Annually.

Estimated Total Annual Hour Burden: 27,660.

There are no capital/startup costs or operating and maintenance costs associated with this ICR since all equipment associated with this ICR is present as part of ordinary business practices.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

EPA will consider the comments received and amend the ICR as

appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: November 16, 2011.

Lisa C. Lund,

Director, Office of Compliance.

[FR Doc. 2011–30782 Filed 11–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9497–8]

Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund, Section 128(a); Notice of Grant Funding Guidance for State and Tribal Response Programs for FY2012

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) will begin to accept requests, from December 1, 2011 through January 31, 2012, for grants to supplement State and Tribal Response Programs. This notice provides guidance on eligibility for funding, use of funding, grant mechanisms and process for awarding funding, the allocation system for distribution of funding, and terms and reporting under these grants. EPA has consulted with state and tribal officials in developing this guidance.

The primary goal of this funding is to ensure that state and tribal response programs include, or are taking reasonable steps to include, certain elements and a public record. Another goal is to provide funding for other activities that increase the number of response actions conducted or overseen by a state or tribal response program. This funding is not intended to supplant current state or tribal funding for their response programs. Instead, it is to supplement their funding to increase their response capacity.

For fiscal year 2012, EPA will consider funding requests up to a maximum of $1.2 million per state or tribe. Subject to the availability of funds, EPA regional personnel will be available to provide technical assistance to states and tribes as they apply for and carry out these grants.

DATES: This action is effective as of December 1, 2011. EPA expects to make non-competitive grant awards to states and tribes which apply during fiscal year 2012.

ADDRESSES: Mailing addresses for U.S. EPA Regional Offices and U.S. EPA Headquarters can be located at *www.epa.gov/brownfields*.

FOR FURTHER INFORMATION CONTACT: The U.S. EPA's Office of Solid Waste and Emergency Response, Office of Brownfields and Land Revitalization, (202) 566–2892.

SUPPLEMENTARY INFORMATION:

I. General Information

Section 128(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, authorizes a noncompetitive $50 million grant program to establish and enhance state [1] and tribal [2] response programs. CERCLA 128(a) response program grants are funded with ''categorical'' State and Tribal Assistance Grant (STAG) appropriations. Section 128(a) cooperative agreements are awarded and administered by the U.S. Environmental Protection Agency (EPA) regional offices. Generally, these response programs address the assessment, cleanup, and redevelopment of brownfields sites and other sites with actual or perceived contamination. This document provides guidance that will enable states and tribes to apply for and use Fiscal Year 2012 section 128(a) funds [3].

The Catalogue of Federal Domestic Assistance entry for the section 128(a) State and Tribal Response Program cooperative agreements is 66.817. This grant program is eligible to be included in state and tribal Performance Partnership Grants under 40 CFR part 35 Subparts A and B, with the exception of funds used to capitalize a revolving loan fund for brownfield remediation under section 104(k)(3); or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a State or Tribal response program.

Requests for funding will be accepted from December 1, 2011, through January 31, 2012. Requests EPA receives after January 31, 2012, will not be considered for FY 2012 funding. Information that must be submitted with the funding request is listed in Section IX of this guidance. States or tribes that do not submit the request in the appropriate manner may forfeit their ability to receive funds. First time requestors are strongly encouraged to contact their Regional EPA Brownfields contacts, listed on the last page of this guidance, prior to submitting their funding request.

Requests submitted by the January 31, 2012, request deadline are preliminary; final cooperative agreement work plans and budgets will be negotiated with the regional offices once final funding allocation determinations are made. As in previous years, EPA will place special emphasis on reviewing a cooperative agreement recipient's use of prior section 128(a) funding in making allocation decisions and unexpended balances are subject to 40 CFR 35.118 and 40 CFR 35.518 to the extent consistent with this guidance.

States and tribes requesting funds are required to provide a Dun and Bradstreet Data Universal Numbering System (DUNS) number with their cooperative agreement's final package. For more information, please go to *http://www.grants.gov.*

II. Background

State and tribal response programs oversee assessment and cleanup activities at the majority of brownfields sites across the country. The depth and breadth of state and tribal response programs vary. Some focus on CERCLA related activities, while others are multi-faceted, for example, addressing sites regulated by both CERCLA and the Resource Conservation and Recovery Act (RCRA). Many state programs also offer accompanying financial incentive programs to spur cleanup and redevelopment. In passing section 128(a) [4] Congress recognized the accomplishments of state and tribal response programs in cleaning up and redeveloping brownfields sites. Section 128(a) also provides EPA with an opportunity to strengthen its partnership with states and tribes.

The primary goal of this funding is to ensure that state and tribal response programs include, or are taking

[1] The term ''state'' is defined in this document as defined in CERCLA section 101(27).

[2] The term ''Indian tribe'' is defined in this document as it is defined in CERCLA section 101(36). Intertribal consortia, as defined in the **Federal Register** Notice at 67 FR 67181, Nov. 4, 2002, are also eligible for funding under CERCLA section 128(a).

[3] The Agency may waive any provision of this guidance that is not required by statute, regulation, Executive Order or overriding Agency policies.

[4] Section 128(a) was added to CERCLA in 2002 by the Small Business Liability Relief and Brownfields Revitalization Act (Brownfield Amendments).

reasonable steps to include, certain elements, and establish and maintain a public record. The secondary goal is to provide funding for other activities that increase the number of response actions conducted or overseen by a state or tribal response program. This funding is not intended to supplant current state or tribal funding for their response programs. Instead, it is to supplement their funding to increase their response program's capacity.

Subject to the availability of funds, EPA regional personnel will be available to provide technical assistance to states and tribes as they apply for and carry out section 128(a) cooperative agreements.

Subject to the availability of funds, EPA regional personnel will be available to provide technical assistance to states and tribes as they apply for and carry out Section 128(a) cooperative agreements.

III. Eligibility for Funding

To be eligible for funding under CERCLA section 128(a), a state or tribe must:

1. Demonstrate that its response program includes, or is taking reasonable steps to include, the four elements of a response program, described in Section V of this guidance; *or* be a party to voluntary response program Memorandum of Agreement (VRP MOA) [5] with EPA;

AND

2. Maintain and make available to the public a record of sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year, see CERCLA section 128(b)(1)(C).

IV. Matching Funds/Cost-Share

States and tribes are *not* required to provide matching funds for cooperative agreements awarded under section 128(a), with the exception of the section 128(a) funds a state or tribe uses to capitalize a Brownfields Revolving Loan Fund under CERCLA section 104(k)(3).

V. The Four Elements—Section 128(a)

Section 128(a) recipients that do not have a VRP MOA with EPA must demonstrate that their response program includes, or is taking reasonable steps to include, the four elements. Achievement of the four elements should be viewed as a priority. Section 128(a) authorizes funding for activities necessary to establish and enhance the four elements, and to establish and maintain the public record requirement.

The four elements of a response program are described below:

1. *Timely survey and inventory of brownfields sites in state or tribal land.* EPA's goal in funding activities under this element is to enable the state or tribe to establish or enhance a system or process that will provide a reasonable estimate of the number, likely locations, and the general characteristics of brownfields sites in their state or tribal lands. EPA recognizes the varied scope of state and tribal response programs and will not require states and tribes to develop a ''list'' of brownfields sites. However, at a minimum, the state or tribe should develop and/or maintain a system or process that can provide a reasonable estimate of the number, likely location, and general characteristics of brownfields sites within their state or tribal lands. Inventories should evolve to a prioritization of sites based on community needs, planning priorities, and protection of human health and the environment.

Given funding limitations, EPA will negotiate work plans with states and tribes to achieve this goal efficiently and effectively, and within a realistic time frame. For example, many of EPA's Brownfields Assessment cooperative agreement recipients conduct inventories of brownfields sites in their communities or jurisdictions. EPA encourages states and tribes to work with these cooperative agreement recipients to obtain the information that they have gathered and include it in their survey and inventory.

2. *Oversight and enforcement authorities or other mechanisms and resources.* EPA's goal in funding activities under this element is to have state and tribal response programs that include oversight and enforcement authorities or other mechanisms, and resources that are adequate to ensure that:

a. A response action will protect human health and the environment, and be conducted in accordance with applicable laws; and

b. The state or tribe will complete the necessary response activities if the person conducting the response activities fails to complete the necessary response activities (this includes operation and maintenance and/or long-term monitoring activities).

3. *Mechanisms and resources to provide meaningful opportunities for public participation.* [6] EPA's goal in funding activities under this element is to have states and tribes include in their response program mechanisms and resources for meaningful public participation, at the local level, including, *at a minimum:*

a. Public access to documents and related materials that a state, tribe, or party conducting the cleanup is relying on or developing in making cleanup decisions or conducting site activities;

b. Prior notice and opportunity for meaningful public comment on cleanup plans and site activities including the input into the prioritization of sites; and

c. A mechanism by which a person who is, or may be, affected by a release or threatened release of a hazardous substance, pollutant, or contaminant at a brownfields site—located in the community in which the person works or resides—may request that a site assessment be conducted. The appropriate state or tribal official must consider this request and appropriately respond.

4. *Mechanisms for approval of a cleanup plan, and verification and certification that cleanup is complete.* EPA's goal in funding activities under this element is to have states and tribes include in their response program mechanisms to approve cleanup plans and to verify that response actions are complete, including a requirement for certification or similar documentation from the state, the tribe, or a licensed site professional that the response action is complete. Written approval by a state or tribal response program official of a proposed cleanup plan is an example of an approval mechanism.

VI. Public Record Requirement

In order to be eligible for section 128(a) funding, states and tribes (including those with MOAs) must establish and maintain a public record system, described below, in order to receive funds. Specifically, under section 128(b)(1)(C), states and tribes must:

1. Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions have been completed during the previous year;

2. Maintain and update, at least annually or more often as appropriate, a record of sites that includes the name and location of sites at which response actions are planned to be addressed in the next year; and

3. Identify in the public record whether or not the site, upon

[5] States or tribes that are parties to VRP MOAs and that maintain and make available a public record are automatically eligible for section 128(a) funding.

[6] States and tribes establishing this element may find useful information on public participation on EPA's community involvement Web site at *http://www.epa.gov/superfund/community/policies.htm.*

completion of the response action, will be suitable for unrestricted use. If not, the public record must identify the institutional controls relied on in the remedy and include relevant information concerning the entity that will be responsible for oversight, monitoring, and/or maintenance of the institutional and engineering controls.

Section 128(a) funds may be used to maintain and make available a public record system that meets the requirements discussed above.

A. Distinguishing the ''Survey and Inventory'' Element From the ''Public Record''

It is important to note that the public record requirement differs from the ''timely survey and inventory'' element described in the ''Four Elements'' section above. The public record addresses sites at which response actions have been completed in the previous year and are planned to be addressed in the upcoming year. In contrast, the ''timely survey and inventory'' element, described above, refers to identifying brownfields sites regardless of planned or completed actions there.

B. Making the Public Record Easily Accessible

EPA's goal is to enable states and tribes to make the public record and other information, such as information from the ''survey and inventory'' element, easily accessible. For this reason, EPA will allow states and tribes to use section 128(a) funding to make the public record, as well as other information, such as information from the ''survey and inventory'' element, available to the public via the internet or other means. For example, the Agency would support funding state and tribal efforts to include detailed location information in the public record such as the street address, and latitude and longitude information for each site.[7] States and tribes should ensure that all affected communities have appropriate access to the public record including making it available on-line, in print at libraries, or other community gathering places.

In an effort to reduce cooperative agreement reporting requirements and increase public access to the public record, EPA encourages states and tribes to place their public record on the internet. If a state or tribe places the public record on the internet, maintains the substantive requirements of the public record, and provides EPA with the link to that site, EPA will, for purposes of cooperative agreement funding only, deem the public record reporting requirement met.

C. Long-Term Maintenance of the Public Record

EPA encourages states and tribes to maintain public record information, including data on institutional controls, on a long term basis (more than one year) for sites at which a response action has been completed. Subject to EPA regional office approval, states or tribes may include development and operation of systems that ensure long term maintenance of the public record, including information on institutional controls, in their work plans.[8]

VII. Use of Funding

A. Overview

Section 128(a)(1)(B) describes the eligible uses of cooperative agreement funds by states and tribes. In general, a state or tribe may use a cooperative agreement to ''establish or enhance'' their response programs, including elements of the response program that include activities related to responses at brownfields sites with petroleum contamination. Eligible activities include, but are not limited to, the following:

- Developing legislation, regulations, procedures, ordinances, guidance, etc. that establish or enhance the administrative and legal structure of their response programs;
- Establishing and maintaining the required public record described in Section VI of this guidance;
- Maintaining and monitoring institutional controls;
- Conducting site-specific activities, such as assessment or cleanup, provided such activities establish and/or enhance the response program and are tied to the four elements. In addition to the requirement under CERCLA section 128(a)(2)(C)(ii) to provide for public comment on cleanup plans and site activities, EPA strongly encourages states and tribes to seek public input regarding the priority of sites to be addressed and solicit input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, and communities with limited experience working with government agencies. EPA will not provide section 128(a) funds solely for assessment or cleanup of specific brownfields sites; site-specific activities must be part of an overall section 128(a) work plan that includes funding for other activities that establish or enhance the four elements;
- Capitalizing a revolving loan fund (RLF) for brownfields cleanup under CERCLA section 104(k)(3). These RLFs are subject to the same statutory requirements and cooperative agreement terms and conditions applicable to RLFs awarded under section 104(k)(3). Requirements include a 20 percent match (can be in the form of a contribution of money, labor, material, or services from a non-federal source) on the amount of section 128(a) funds used for the RLF, a prohibition on using EPA cooperative agreement funds for administrative costs relating to the RLF, and a prohibition on using RLF loans or subgrants for response costs at a site for which the recipient may be potentially liable under section 107 of CERCLA. Other prohibitions contained in CERCLA section 104(k)(4) also apply; and
- Purchasing environmental insurance or developing a risk-sharing pool, indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program.

B. Uses Related To ''Establishing'' a State or Tribal Response Program

Under CERCLA section 128(a), ''establish'' includes activities necessary to build the foundation for the four elements of a state or tribal response program and the public record requirement. For example, a state or tribal response program may use section 128(a) funds to develop regulations, ordinances, procedures, and/or guidance. For more developed state or tribal response programs, ''establish'' may also include activities that keep their program at a level that meets the four elements and maintains a public record required as a condition of funding under CERCLA section 128(b)(1)(C).

C. Uses Related To ''Enhancing'' a State or Tribal Response Program

Under CERCLA section 128(a), ''enhance'' is related to activities that add to or improve a state or tribal response program or increase the number of sites at which response actions are conducted under a state or tribal response program.

The exact ''enhancement'' uses that may be allowable depend upon the

[7] For further information on latitude and longitude information, please see EPA's data standards web site available at *http://iaspub.epa.gov/sor_internet/registry/datastds/findadatastandard/epaapproved/latitudelongitude.*

[8] States and tribes may find useful information on institutional controls on EPA's institutional controls web site at *http://www.epa.gov/superfund/policy/ic/index.htm.*

work plan negotiated between the EPA regional office and the state or tribe. For example, regional offices and states or tribes may agree that section 128(a) funds may be used for outreach and training directly related to increasing awareness of its response program, and improving the skills of program staff. It may also include developing better coordination and understanding of other state response programs, *e.g.,* RCRA or Underground Storage Tanks (USTs). As another example, states and tribal response programs enhancement activities can include outreach to local communities to increase their awareness and knowledge regarding the importance of monitoring engineering and institutional controls. Other ''enhancement'' uses may be allowable as well.

D. Uses Related to Site-Specific Activities

1. Uses for Site-Specific Activities

States and tribes may use section 128(a) funds for site-specific activities that improve state or tribal capacity. The amount grantees may request for site-specific assessments and cleanups may not exceed 50% of the total amount of funding. A grantee may request a waiver to exceed the 50% of annual funding for site specific activities. In order for EPA to consider the waiver, the total amount of the request may not exceed the grantee's prior year's funding level. The funding request must include a brief justification describing the reason(s) for spending more than 50% of an annual allocation on site-specific activities. An applicant must include the following information in the written justification:

- What site specific activities will be covered by this funding? If known, provide site specific information and describe the development or enhancement of your state/tribal site specific program. Further explain how the community will be (or has been) involved in prioritization of site work and especially those sites where there is a potential or known significant environmental impact to the community;
- How will the core programmatic capacity (i.e., the four elements of a response program) and related activities be maintained in spite of an increase in site-specific work? Grantees must demonstrate that they have adequate funding from other sources to effectively carry out work on the four elements for EPA to grant a waiver of the 50% limit on using 128(a) funds for site-specific activities;
- Describe how this shift in funding towards site-specific work is more appropriate for your response program rather than a request for an increase in overall funding; and
- Are the sites to be addressed those which the affected community(ies) has requested an assessment (refer to Overview of Funding section of this notice for more information)? Please explain.

EPA Headquarters will determine approval of waivers on the information that is included in the justification along with the request for funding, as well as other information available to the Agency. EPA's Regional Brownfield Coordinators will inform grantees of the Agency's final decision(s).

2. Uses Related to Site-Specific Assessment and Cleanup Activities

Site-specific assessment and cleanup activities should establish and/or enhance the response program and be tied to the four elements. Site-specific assessments and cleanups must comply with all applicable laws and are subject to the following restrictions:

a. Section 128(a) funds can only be used for assessments or cleanups at sites that meet the definition of a brownfields site at CERCLA section 101(39). EPA encourages states and tribes to use site-specific funding to perform assessment (*e.g.,* phase II and phase III assessments) and cleanup activities that will lead more quickly to the reuse of sites;

b. Absent EPA approval, no more than $200,000 per site assessment can be funded with section 128(a) funds, and no more than $200,000 per site cleanup can be funded with section 128(a) funds;

c. Absent EPA approval, the state/tribe may not use funds awarded under this agreement to assess and clean up sites owned or operated by the recipient; and

d. Assessments and cleanups cannot be conducted at sites where the state/tribe is a potentially responsible party pursuant to CERCLA section 107, except:

- At brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I); or
- When the recipient would satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was on or before January 11, 2002.

Subgrants cannot be provided to entities that may be potentially responsible parties (pursuant to CERCLA section 107) at the site for which the assessment or cleanup activities are proposed to be conducted, except:

1. At brownfields sites contaminated by a controlled substance as defined in CERCLA section 101(39)(D)(ii)(I); or

2. when the recipient would satisfy all of the elements set forth in CERCLA section 101(40) to qualify as a bona fide prospective purchaser except that the date of acquisition of the property was on or before January 11, 2002.

3. Uses Related to Site-Specific Activities at Petroleum Brownfields Sites

States and tribes may use section 128(a) funds for activities that establish and enhance their response programs, even if their response programs address petroleum contamination. Also, the costs of site-specific activities, such as site assessments or cleanup at petroleum contaminated brownfields sites, defined at CERCLA section 101(39)(D)(ii)(II), are eligible and are allowable if the activity is included in the work plan negotiated between the EPA regional office and the state or tribe. Section 128(a) funds used to capitalize a Brownfields RLF may be used at brownfields sites contaminated by petroleum to the extent allowed under CERCLA section 104(k)(3).

4. Other Eligible Uses of Funding

Other eligible uses of funds for site-specific related include, but are not limited to, the following activities:

- Technical assistance to federal brownfields cooperative agreement recipients;
- Development and/or review of quality assurance project plans (QAPPs); and
- Preparation and submission of Property Profile Forms and/or entering data into the ACRES database

E. Uses Related to Activities at ''Non-Brownfields'' Sites

Costs incurred for activities at non-brownfields sites, e.g., oversight, may be eligible and allowable if such activities are included in the state's or tribe's work plan. These costs need not be incurred in connection with a brownfields site to be eligible, but must be authorized under the state's or tribe's work plan to be allowable. Other uses may be eligible and allowable as well, depending upon the work plan negotiated between the EPA regional office and the state or tribe. *However, assessment and cleanup activities may only be conducted on eligible brownfields sites, as defined in CERCLA section 101(39).*

VIII. General Programmatic Guidelines For 128(a) Grant Funding Requests

Funding authorized under CERCLA section 128(a) is awarded through a cooperative agreement [9] with a state or tribe. The program is administered under the general EPA grant and cooperative agreement regulations for states, tribes, and local governments found in the Code of Federal Regulations at 40 CFR Part 31 as well as applicable provisions of 40 CFR part 35 Subparts A and B. Under these regulations, the cooperative agreement recipient for section 128(a) grant program is the government to which a cooperative agreement is awarded and which is accountable for the use of the funds provided. The cooperative agreement recipient is the entire legal entity even if only a particular component of the entity is designated in the cooperative agreement award document. Further, unexpended balances of cooperative agreement funds are subject to 40 CFR 35.118 and 40 CFR 35.518 to the extent consistent with this guidance. EPA allocates funds to state and tribal response programs under 40 CFR 35.420 and 40 CFR 35.737

A. One Application per State or Tribe

Subject to the availability of funds, EPA regional offices will negotiate and enter into section 128(a) cooperative agreements with eligible and interested states or tribes. *EPA will accept only one application from each eligible state or tribe.*

B. Define the State or Tribal Response Program

States and tribes must define in their work plan the ''section 128(a) response program(s)'' to which the funds will be applied, and may designate a component of the state or tribe that will be EPA's primary point of contact for negotiations on their proposed work plan. When EPA funds the section 128(a) cooperative agreement, states and tribes may distribute these funds among the appropriate state and tribal agencies that are part of the section 128(a) response program. This distribution must be clearly outlined in their annual work plan.

C. Separate Cooperative Agreements for the Capitalization of RLFs Using Section 128(a) Funds

If a portion of the section 128(a) grant funds requested will be used to capitalize a revolving loan fund for cleanup, pursuant to section 104(k)(3), two separate cooperative agreements must be awarded, i.e., one for the RLF and one for non-RLF uses. States and tribes may, however, submit one initial request for funding, delineating the RLF as a proposed use. Section 128(a) funds used to capitalize an RLF are not eligible for inclusion into a Performance Partnership Grant (PPG).

D. Authority To Manage a Revolving Loan Fund Program

If a state or tribe chooses to use its section 128(a) funds to capitalize a revolving loan fund program, the state or tribe must have the authority to manage the program, e.g., issue loans. If the agency/department listed as the point of contact for the section 128(a) cooperative agreement does not have this authority, it must be able to demonstrate that another state or tribal agency does have the authority to manage the RLF and is willing to do so.

E. Section 128(A) Cooperative Agreements Can Be Part of a Performance Partnership Grant (PPG)

States and tribes may include section 128(a) cooperative agreements in their PPG 69 FR 51,756 (2004). Section 128(a) funds used to capitalize an RLF or purchase insurance or develop a risk sharing pool, an indemnity pool, or insurance mechanism to provide financing for response actions under a state or tribal response program are not eligible for inclusion in the PPG.

F. Project Period

EPA regional offices will determine the project period for each cooperative agreement. These may be for multiple years depending on the regional office's cooperative agreement policies. Each cooperative agreement must have an annual budget period tied to an annual work plan. Pre-award costs are subject to 40 CFR 35.113 and 40 CFR 35.513.

G. Demonstrating the Four Elements

As part of the annual work plan negotiation process, states or tribes that do *not* have VRP MOAs must demonstrate that their program includes, or is taking reasonable steps to include, the four elements described in Section V. EPA will not fund, in future years, state or tribal response program annual work plans if EPA determines that these requirements are not met or reasonable progress is not being made. EPA may base this determination on the information the state or tribe provides to support its work plan, or on EPA's review of the state or tribal response program.

H. Establishing and Maintaining the Public Record

Prior to funding a state's or tribe's annual work plan, EPA regional offices will verify and document that a public record, as described in Section VI and below, exists and is being maintained.[10] Specifically:

- *States or tribes that received initial funding prior to FY11:* Requests for FY12 funds will *not* be accepted from states or tribes that fail to demonstrate, by the January 31, 2012, request deadline, that they established and are maintaining a public record. (**Note,** this would potentially impact any state or tribe that had a term and condition placed on their FY11 cooperative agreement that prohibited drawdown of FY11 funds prior to meeting public record requirement). States or tribes in this situation will not be prevented from drawing down their prior year funds, once the public record requirement is met, but will be restricted from applying for FY12 funding; and
- *States or Tribes that received initial funding in FY11:* By the time of the actual FY12 award, the state or tribe must demonstrate that they established and maintained the public record (those states and tribes that do not meet this requirement will have a term and condition placed on their FY12 cooperative agreement that prevents the drawdown of FY12 funds until the public record requirement is met).

I. Demonstration of Significant Utilization of Prior Years' Funding

States and tribes should be aware that EPA and its Congressional appropriations committees are concerned regarding the amount of unexpended balances of STAG categorical grants. During the allocation process, EPA headquarters places significant emphasis on the utilization of prior years' funding. Unused funds from prior years will be considered in the allocation process. Existing balances of cooperative agreement funds as reflected in EPA's Financial Data Warehouse could support an allocation amount below a grantee's request for funding or, if appropriate, deobligation and reallocation by EPA Regions as provided for in 40 CFR 35.118 and 40 CFR 35.518. Grantees should include a detailed explanation and justification of funds that remain in EPA's Financial Data Warehouse from prior years (that are related to response program

[9] A cooperative agreement is an agreement to a state/tribe that includes substantial involvement by EPA on activities described in the work plan which may include technical assistance, collaboration on program priorities, etc.

[10] For purposes of cooperative agreement funding, the state's or tribe's public record applies to that state's or tribe's response program(s) that utilized the section 128(a) funding.

activities or brownfield related activities).

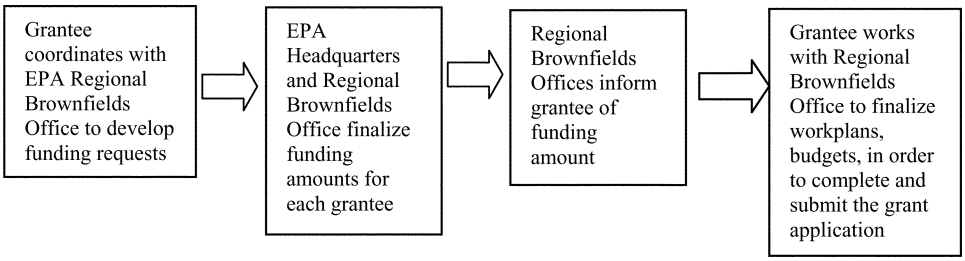
EPA Regional staff will review EPA's Financial Database Warehouse to identify the amount of remaining prior year(s) funds. The cooperative agreement recipient should work, as early as possible, with both their own finance department, and with their Regional Project Officer to reconcile any discrepancy between the amount of unspent funds showing in EPA's system, and the amount reflected in the recipient's records. The recipient should obtain concurrence from the Region on the amount of unspent funds requiring justification by the deadline for this request for funding.

J. Optional: Explanation of Overall Program Impacts of Possible Funding Reductions

Please describe the effects, if any, of a 10% and 20% reduction in your current funding amount on significant activities of your response program. Specifically, where would the decrease in funding be realized (e.g. reduction in staff, decrease in oversight activities, or other impacts to the environment and health of the communities the program serves, etc.) in your program?

K. Allocation System and Process for Distribution of Funds

EPA regional offices will work with interested states and tribes to develop their preliminary work plans and funding requests. Final cooperative agreement work plans and budgets will be negotiated with the regional office once final allocation determinations are made. Please refer to process flow chart below:



For Fiscal Year 2012, EPA will consider funding requests up to a maximum of $1.2 million per state or tribe. Please note the CERCLA 128(a) annual program's budget has remained static while demand for funding continues to increase every year.[11] Therefore, it is likely that the FY12 state and tribal individual funding amounts will be less than the FY11 individual funding amounts.

After the January 31, 2012, request deadline, EPA's Regional Offices will submit summaries of state and tribal requests to EPA Headquarters. Before submitting requests to EPA Headquarters, Regional Offices may take into account additional factors when determining recommended allocation amounts. Such factors include, but are not limited to, the depth and breadth of the state or tribal program; scope of the perceived need for the funding, e.g., size of state or tribal jurisdiction or the proposed work plan balanced against capacity of the program, amount of current year funding, funds remaining from prior years, etc.

After receipt of the regional recommendations, EPA Headquarters will consolidate requests and allocate funds accordingly.

In FY13 the maximum amount that EPA will consider for a funding request will likely decrease at a rate up to 30% a year, and could decrease at a greater rate depending on enacted Congressional budget amounts and demand for funding.

IX. Information to be Submitted With the Funding Request

A. Demonstration of Significant Utilization of Prior Years' Funding

States and tribes requesting section 128(a) FY12 funds must submit the following information, as applicable, to their regional brownfield contact on or before January 31, 2012. If a grantee wishes to avoid an allocation reduction, when submitting a request for FY12 funds, include a detailed explanation and justification of funds that remain in EPA's financial Data Warehouse from prior years (that are related to response program activities or brownfield related activities).

For those states and tribes that received FY10 or prior section 128(a) funds, you must provide the amount of prior years' funding including FY10 funds that recipients have not received in payments (i.e., funds EPA has obligated for grants that remain in EPA's Financial Data Warehouse). EPA will take into account these funds in the allocation process when determining the recipient's programmatic needs under 40 CFR 35.420 and 40 CFR 35.737.

B. Summary of Planned Use of FY12 Funding

Funding use	FY11 Awarded	FY12 Requested	Summary of intended use (example uses)
All states and tribes requesting FY12 funds must submit a summary of the planned use of the funds with associated dollar amounts. Please provide the request in the following:	$XX,XXX	$XX,XXX	
Establish or enhance the four elements:			
1. Timely survey and inventory of brownfields sites.	.....	.....	1. Examples: • Inventory and prioritize brownfields sites.

[11] FY11 EPA received $64.9 Million in requests for funding from States and Tribes under CERCLA 128(a). The FY11 enacted budget was $49.5 Million. The resulting budget shortfall was approximately $ 15.4 Million.

Funding use	FY11 Awarded	FY12 Requested	Summary of intended use (example uses)
2. Oversight and enforcement authorities or other mechanisms.	.....	.....	2. Examples: • Develop/enhance ordinances, regulations, procedures for response programs.
3. Mechanisms and resources to provide meaningful opportunities for public participation.	.....	.....	3. Examples: • Develop a community involvement process. • Fund an outreach coordinator. • Issue public notices of site activities. • Develop a process to seek public input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, and communities with limited experience working with government agencies to prioritize sites to be addressed.
4. Mechanisms or approval of a cleanup plan and verification and certification that cleanup is complete.	.....	.....	4. Examples: • Review cleanup plans and verify completed actions.
Establish and maintain the public record.	$XX,XXX	$XX,XXX	• Maintain public record. • Create web site for public record. • Disseminate public information on how to access the public record.
Enhance the response program	$XX,XXX	$XX,XXX	• Provide oversight of site assessments and cleanups. • Attend training and conferences on brownfields cleanup technologies & Other brownfields topics. • Update and enhance program management activities. • Negotiate/oversee contracts for response programs. • Enhance program management & tracking systems.
Site-specific activities *(amount requested should be incidental to the workplan, see Section VII.D for more information on what activities should be considered when calculating site specific activities).*	$XX,XXX	$XX,XXX	• Perform site assessments and cleanups. • Develop QAPPs. • Prepare Property Profile Forms/input data into ACRES database for these sites.
Environmental insurance	$XX,XXX	$XX,XXX	• Review potential uses of environmental insurance. • Manage an insurance risk pool.
Revolving loan fund	$XX,XXX	$XX,XXX	• Create a cleanup revolving loan fund.
Total funding	$XXX,XXX	$XXX,XXX	Performance Partnership Grant? Yes ☐ No ☐

X. Terms and Reporting

Cooperative agreements for state and tribal response programs will include programmatic and administrative terms and conditions. These terms and conditions will describe EPA's substantial involvement including technical assistance and collaboration on program development and site-specific activities. Each of the subsections below summarizes the basic terms and conditions, and related reporting that will be required if a cooperative agreement with EPA is awarded.

A. Progress Reports

In accordance with 40 CFR 31.40, state and tribes must provide progress reports as provided in the terms and conditions of the cooperative agreement negotiated with EPA regional offices. State and tribal costs for complying with reporting requirements are an eligible expense under the section 128(a) cooperative agreement. As a minimum, state or tribal progress reports must include both a narrative discussion and performance data relating to the state's or tribe's accomplishments and environmental outputs associated with the approved budget and workplan, and should provide an accounting of section 128(a) funding. If applicable, the state or tribe must include information on activities related to establishing or enhancing the four elements of the state's or tribe's response program. All recipients must provide information relating to establishing or, if already established, maintaining the public record. *Depending upon the activities included in the state's or tribe's work plan,* an EPA regional office may request that a progress report include:

1. *Reporting environmental insurance.* Recipients with work plans that include funding for *environmental insurance* must report:

- Number and description of insurance policies purchased (e.g., type of coverage provided; dollar limits of coverage; any buffers or deductibles; category and identity of insured persons; premium; first dollar or umbrella; site specific or blanket; occurrence or claims made, etc.);
- The number of sites covered by the insurance;
- The amount of funds spent on environmental insurance (*e.g.,* amount dedicated to insurance program, or to insurance premiums); and
- The amount of claims paid by insurers to policy holders.

2. *Reporting for site-specific assessment or cleanup activities.* Recipients with work plans that include funding for *brownfields site assessment or cleanup* must input information required by the OMB-approved Property Profile Form into the Assessment Cleanup and Redevelopment Exchange System (ACRES) database for each site assessment and cleanup. In addition, recipients must report how they provide the affected community with prior notice and opportunity for meaningful participation as per CERCLA section 128(a)(2)(C)(ii) on proposed cleanup plans and site activities. For example, EPA strongly encourages states and tribes to seek public input regarding the priority of sites to be addressed and solicit input from local communities, especially potential environmental justice communities, communities with a health risk related to exposure to hazardous waste or other public health concerns, economically disadvantaged or remote areas, and communities with

limited experience working with government agencies.

3. *Reporting for other site-specific activities.* Recipients with work plans that include funding for *other site-specific related activities* must include a description of the site-specific activities and the number of sites at which the activity was conducted. For example:

- Number and frequency of oversight audits of licensed site professional certified cleanups;
- Number and frequency of state/tribal oversight audits conducted;
- Number of sites where staff conducted audits, provided technical assistance, or conducted other oversight activities; and
- Number of staff conducting oversight audits, providing technical assistance, or conducting other oversight activities.

4. *Reporting for RLF uses.* Recipients with work plans that include funding for revolving loan fund (RLF) must include the information required by the terms and conditions for progress reporting under CERCLA section 104(k)(3) RLF cooperative agreements.

5. *Reporting for Non-MOA states and tribes.* All recipients *without* a VRP MOA must report activities related to establishing or enhancing the four elements of the state's or tribe's response program. For each element state/tribes must report how they are maintaining the element or how they are taking reasonable steps to establish or enhance the element as negotiated in individual state/tribal work plans. For example, pursuant to CERCLA section 128(a)(2)(B), reports on the oversight and enforcement authorities/mechanisms element *may* include:

- A narrative description and copies of applicable documents developed or under development to enable the response program to conduct enforcement and oversight at sites. For example:
  - Legal authorities and mechanisms (e.g., statutes, regulations, orders, agreements); and
  - Policies and procedures to implement legal authorities; and other mechanisms;
- A description of the resources and staff allocated/to be allocated to the response program to conduct oversight and enforcement at sites as a result of the cooperative agreement;
- A narrative description of how these authorities or other mechanisms, and resources, are adequate to ensure that:
  - A response action will protect human health and the environment; and be conducted in accordance with applicable federal and state law; and if the person conducting the response action fails to complete the necessary response activities, including operation and maintenance or long-term monitoring activities, the necessary response activities are completed; and
- A narrative description and copy of appropriate documents demonstrating the exercise of oversight and enforcement authorities by the response program at a brownfields site.

The regional offices may also request other information be added to the progress reports, as appropriate, to properly document activities described by the cooperative agreement work plan.

EPA regions may allow states or tribes to provide performance data in appropriate electronic format.

The regional offices will forward progress reports to EPA Headquarters, if requested. This information may be used to develop national reports on the outcomes of CERCLA section 128(a) funding to states and tribes.

B. Reporting of Program Activity Levels

States and tribes must report, by January 31, 2012, a summary of the *previous federal fiscal year's* work (October 1, 2010 through September 30, 2011). The following information must be submitted to your regional project officer:

- Category(ies) of properties (or sites) that CERCLA 128(a) funds are used for capacity building and/or site-specific activities:

—Brownfields
—Underground Storage Tanks/Leaking Underground Storage Tanks
—Federal Facilities
—Solid Waste
—Superfund
—Hazardous Waste Facilities
—VCP (Voluntary Cleanup Program, Independent Cleanup Program, etc.)
—Other_____

- Number of properties (or sites) enrolled in a response program during FY11;
- Number of properties (or sites) where documentation indicates that cleanup work is complete and all required institutional controls (IC's) are in place, or not required;
- Total number of acres associated with properties (or sites) in the previous bullet; and
- Number of properties where assistance was provided, but the property was not enrolled in the response program (OPTIONAL).

Where applicable, EPA may require states/tribes to report specific performance measures related to the four elements which can be aggregated for national reporting to Congress.

For example:

1. Timely survey and inventory—estimated number of brownfields sites in the state or on tribal land;
2. Oversight and enforcement authorities/mechanisms—number of active cleanups and percentage that received oversight; percentage of active cleanups not in compliance with the cleanup workplan and that received communications from recipient regarding non-compliance;
3. Public participation—percentage of sites in the response program where public meetings/notices were conducted regarding the cleanup plan and/or other site activities; number of requests and responses to site assessment requests; and
4. Cleanup approval/certification mechanisms—total number of ''no further action'' letters or total number of certificate of completions.

Note: Where applicable, this reporting requirement may include activities not funded with CERCLA section 128(a) monies, because this information may be used by EPA to evaluate whether recipients without MOAs have met or are taking reasonable steps to meet the four elements of a response program pursuant to CERCLA section 128(a)(2).

C. Reporting of Public Record

All recipients must report, as specified in the terms and conditions of their cooperative agreement, information related to establishing or, if already established, maintaining the public record, described above. States and tribes can refer to an already existing public record, *e.g.,* Web site or other public database to meet the public record requirement. Recipients reporting may only be required to demonstrate that the public record a) exists and is up-to-date, and b) is adequate. A public record may include the following information:

A list of sites at which response actions have been completed including:

- Date the response action was completed;
- Site name;
- Name of owner at time of cleanup, if known;
- Location of the site (street address, and latitude and longitude);
- Whether an institutional control is in place;
- Type of institutional control in place (e.g., deed restriction, zoning restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.);
- Nature of the contamination at the site (e.g., hazardous substances, contaminants or pollutants, petroleum contamination, etc.); and
- Size of the site in acres.

A list of sites planned to be addressed by the state or tribal response program including:

- Site name and the name of owner at time of cleanup, if known;
- Location of the site (street address, and latitude and longitude);
- To the extent known, whether an institutional control is in place;
- Type of the institutional control in place (*e.g.,* deed restriction, zoning restriction, local ordinance, state registries of contaminated property, deed notices, advisories, etc.);
- To the extent known, the nature of the contamination at the site (e.g., hazardous substances, contaminants, or pollutants, petroleum contamination, etc.); and
- Size of the site in acres

D. Award Administration Information

1. Subaward and Executive Compensation Reporting

Applicants must ensure that they have the necessary processes and systems in place to comply with the subaward and executive total compensation reporting requirements established under OMB guidance at 2 CFR Part 170, unless they qualify for an exception from the requirements, should they be selected for funding.

2. Central Contractor Registration (CCR) and Data Universal Numbering System (DUNS) Requirements

Unless exempt from these requirements under OMB guidance at 2 CFR Part 25 (*e.g.,* individuals), applicants must:

A. Register in the CCR prior to submitting an application or proposal under this announcement. CCR information can be found at *https://www.bpn.gov/ccr/;*

B. Maintain an active CCR registration with current information at all times during which it has an active federal award or an application or proposal under consideration by an agency, and

C. Provide its DUNS number in each application or proposal it submits to the agency. Applicants can receive a DUNS number, at no cost, by visiting the D&B Web site at: *https://iupdate.dnb.com/iUpdate/companylookup.htm.*

Failure to comply with these requirements will affect the applicant's ability to receive any funding.

3. Use of Funds

An applicant that receives an award under this announcement is expected to manage assistance agreement funds efficiently and effectively, and make sufficient progress towards completing the project activities described in the work-plan in a timely manner. The assistance agreement will include terms/conditions implementing this requirement.

REGIONAL STATE AND TRIBAL BROWNFIELDS CONTACTS

Region	State	Tribal
1 CT, ME, MA, NH, RI, VT.	James Byrne, 5 Post Office Square, Suite 100 (OSRR07–2), Boston, MA 02109–3912, Phone (617) 918–1389 Fax (617) 918–1291.	AmyJean McKeown, 5 Post Office Square, Suite 100 (OSRR07–2), Boston, MA 02109–3912, Phone (617) 918–1248 Fax (617) 918–1291.
2 NJ, NY, PR, VI	John Struble, 290 Broadway, 18th Floor, New York, NY 10007, Phone (212) 637–4291 Fax (212) 637–4211.	John Struble, 290 Broadway, 18th Floor, New York, NY 10007, Phone (212) 637–4291 Fax (212) 637–4211.
3 DE, DC, MD, PA, VA, WV.	Janice Bartel, 1650 Arch Street (3HS51), Philadelphia, PA 19103, Phone (215) 814–5394 Fax (215) 814–3274.	
4 AL, FL, GA, KY, MS, NC, SC, TN.	Nicole Comick-Bates, 61 Forsyth Street SW., 10TH FL (9T25), Atlanta, GA 30303–8909, Phone (404) 562–9966 Fax (404) 562–8788.	Cindy J. Nolan, 61 Forsyth Street SW., 10TH FL (9T25), Atlanta, GA 30303–8909, Phone (404) 562–8425 Fax (404) 562–8788.
5 IL, IN, MI, MN, OH, WI.	Jan Pels, 77 West Jackson Boulevard (SE–7J), Chicago, IL 60604–3507, Phone (312) 886–3009 Fax (312) 692–2161.	Jane Neumann, 77 West Jackson Boulevard (SE–7J), Chicago, IL 60604–3507, Phone (312) 353–0123 Fax (312) 697–2649.
6 AR, LA, NM, OK, TX	Amber Perry, 1445 Ross Avenue, Suite 1200 (6SF), Dallas, TX 75202–2733, Phone (214) 665–3172 Fax (214) 665–6660.	Amber Perry, 1445 Ross Avenue, Suite 1200 (6SF), Dallas, TX 75202–2733, Phone (214) 665–3172 Fax (214) 665–6660.
7 IA, KS, MO, NE	Susan Klein, 901 N. 5th Street (SUPRSTAR), Kansas City, KS 66101, Phone (913) 551–7786 Fax (913) 551–9786.	Susan Klein, 901 N. 5th Street (SUPRSTAR), Kansas City, KS 66101, Phone (913) 551–7786 Fax (913) 551–9798.
8 CO, MT, ND, SD, UT, WY.	Christina Wilson, 1595 Wynkoop Street (EPR–B), Denver, CO 80202–1129, Phone (303) 312–6706 Fax (303) 312–6065.	Barbara Benoy, 1595 Wynkoop Street (8EPR–SA), Denver, CO 80202–1129, Phone (303) 312–6760 Fax (303) 312–6962.
9 AZ, CA, HI, NV, AS, GU.	Eugenia Chow, 75 Hawthorne St. (SFD–6–1), San Francisco, CA 94105, Phone (415) 972–3160 Fax (415) 947–3520.	Glenn Kistner, 75 Hawthorne St. (SFD–6–1), San Francisco, CA 94105, Phone (415) 972–3004 Fax (415) 947–3520.
10 AK, ID, OR, WA	Deborah Burgess, 300 Desmond Dr. SE., Suite 102 (WOO), Lacey, WA 98503, Phone (360) 753–9079 Fax (360) 753–8080.	Deborah Burgess, 300 Desmond Dr. SE., Suite 102 (WOO), Lacey, WA 98503, Phone (360) 753–9079 Fax (360) 753–8080.

XI. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and is therefore not subject to OMB review. Because this action is not subject to notice and comment requirements under the Administrative Procedures Act or any other statute, it is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or Sections 202 and 205 of the Unfunded Mandates Reform Act of 1999 (UMRA) (Pub.L. 104–4). In addition, this action does not significantly or uniquely affect small governments. This action does not create new binding legal requirements that substantially and directly affect Tribes under Executive Order 13175 (63 FR 67249, November 9, 2000). This action does not have significant Federalism implications under Executive Order 13132 (64 FR 43255, August 10, 1999). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994). This action does not involve technical standards; thus, the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The Congressional Review Act, 5 U.S.C. 801 *et seq.,* generally provides that before certain actions may take effect, the agency promulgating the action must submit a report, which includes a copy of the action, to each House of the Congress and to the Comptroller General of the United States. Because this final action does not contain legally binding requirements, it is not subject to the Congressional Review Act.

Dated: November 22, 2011.

David R. Lloyd,

Director, Office of Brownfields and Land Revitalization, Office of Solid Waste and Emergency Response.

[FR Doc. 2011–30780 Filed 11–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9497–5]

Good Neighbor Environmental Board

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92463, EPA gives notice of a meeting of the Good Neighbor Environmental Board (Board). The Board usually meets three times each calendar year, twice at different locations along the U.S. border with Mexico, and once in Washington, DC It was created in 1992 by the Enterprise for the Americas Initiative Act, Public Law 102–532, 7 U.S.C. 5404. Implementing authority was delegated to the Administrator of EPA under Executive Order 12916. The Board is responsible for providing advice to the President and the Congress on environmental and infrastructure issues and needs within the States contiguous to Mexico in order to improve the quality of life of persons residing on the United States side of the border. The statute calls for the Board to have representatives from U.S. Government agencies; the states of Arizona, California, New Mexico and Texas; and tribal and private organizations with experience in environmental and infrastructure issues along the US–Mexico border.

The purpose of the meeting is to finalize the Board's 14th report, which will focus on the environmental and economic benefits of renewable energy development in the border region. A copy of the meeting agenda will be posted at *http://www.epa.gov/ocem/gneb.*

DATES: The Good Neighbor Environmental Board will hold an open meeting on Wednesday December 14, from 9 a.m. (registration at 8:30 a.m.) to 12:30 p.m. The following day, December 15, the Board will meet from 8:30 a.m. until 2 p.m. Due to funding uncertainties, EPA is announcing the meeting with less than 15 days public notice.

ADDRESSES: The meeting will be held at EPA Headquarters 1200 Pennsylvania Avenue NW., Washington, DC 20460, in Ariel Rios North, Room 3000. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Acting Designated Federal Officer, *joyce.mark@epa.gov,* (202) 564–2130, U.S. EPA, Office of Federal Advisory Committee Management and Outreach (1601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: If you wish to make oral comments or submit written comments to the Board, please contact Mark Joyce at least five days prior to the meeting.

General Information: Additional information concerning the GNEB can be found on its Web site at *www.epa.gov/ocem/gneb.*

Meeting Access: For information on access or services for individuals with disabilities, please contact Mark Joyce at (202) 564–2130 or by email at *joyce.mark@epa.gov.* To request accommodation of a disability, please contact Mark Joyce at least 10 days prior to the meeting to give EPA as much time as possible to process your request.

Dated: November 17, 2011.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 2011–30708 Filed 11–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9497–6]

Farm, Ranch, and Rural Communities Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a meeting of the Farm, Ranch, and Rural Communities Committee (FRRCC). The FRRCC is a policy-oriented committee that provides policy advice, information, and recommendations to the EPA Administrator on a range of environmental issues and policies that are of importance to agriculture and rural communities.

The purpose of this meeting is to review and finalize recommendations regarding effective approaches to addressing water quality issues associated with agricultural production.

DATES: The Farm, Ranch, and Rural Communities Committee will hold an open meeting on Monday, December 12, 2011 from 10 a.m. until 12 p.m. Eastern Standard Time. Due to logistical circumstances, EPA is announcing this meeting with less than 15 calendar days public notice.

ADDRESSES: The meeting will be held at EPA Headquarters at 1200 Pennsylvania Avenue NW, Washington, DC 20460 in Ariel Rios North, Room 3530. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Alicia Kaiser, Designated Federal Officer, *kaiser.alicia@epa.gov,* (202) 564–7273, U.S. EPA, Office of the Administrator (1101A), 1200 Pennsylvania Avenue NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Due to time constraints and the need for the Committee to discuss its recommendations, there will not be an opportunity for the public to make oral comments at this meeting. However, written comments may be submitted and will be provided to the Committee. Please send all written comments to Alicia Kaiser, Designated Federal Officer, at the contact information above. All requests must be submitted no later than December 5, 2011.

Meeting Access: For information on access or services for individuals with disabilities, please contact Alicia Kaiser at (202) 564–7273 or *kaiser.alicia@epa.gov.* To request

accommodation of a disability, please contact Alicia Kaiser, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: November 22, 2011.

Cynthia D. Jones-Jackson,

Acting Designated Federal Officer.

[FR Doc. 2011–30711 Filed 11–28–11; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9497–7]

National Advisory Council for Environmental Policy and Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Request for Nominations to the National Advisory Council for Environmental Policy and Technology (NACEPT).

SUMMARY: The U.S. Environmental Protection Agency (EPA) invites nominations from a diverse range of qualified candidates to be considered for appointment to the National Advisory Council for Environmental Policy and Technology (NACEPT). Vacancies are anticipated to be filled by February, 2012. Sources in addition to this **Federal Register** Notice may be utilized in the solicitation of nominees.

Background: NACEPT is a Federal advisory committee chartered under the Federal Advisory Committee Act (FACA), Public Law 92–463. EPA established NACEPT in 1988 to provide advice to the EPA Administrator on a broad range of environmental policy, technology and management issues. Members serve as representatives from academia, industry, non-governmental organizations, and state, local, and tribal governments. Members are appointed by the EPA Administrator for two year terms. The Council usually meets 2–3 times annually and the average workload for the members is approximately 10 to 15 hours per month. Members serve on the Council in a voluntary capacity. However, EPA provides reimbursement for travel and incidental expenses associated with official government business. EPA is seeking nominations from all sectors, including academia, industry, non-governmental organizations, and state, local and tribal governments. Nominees will be considered according to the mandates of FACA, which requires committees to maintain diversity across a broad range of constituencies, sectors, and groups. EPA values and welcomes diversity. In an effort obtain nominations of diverse candidates, EPA encourages nominations of women and men of all racial and ethnic groups.

The following criteria will be used to evaluate nominees:

—Extensive professional knowledge of environmental policy, management, and technology issues, particularly issues dealing with sustainability.
—Demonstrated ability to examine and analyze environmental issues with objectivity and integrity.
—Senior-level experience that fills a current need on the Council.
—Excellent interpersonal, oral and written communication, and consensus-building skills.
—Ability to volunteer approximately 10 to 15 hours per month to the Council's activities, including participation on teleconference meetings and preparation of text for Council reports and advice letters.

Nominations must include a resume and a short biography describing the professional and educational qualifications of the nominee, as well as the nominee's current business address, email address, and daytime telephone number. Interested candidates may self-nominate. Anyone interested in being considered for nomination is encouraged to submit their application materials as soon as possible. To help the Agency in evaluating the effectiveness of its outreach efforts, please tell us how you learned of this opportunity. Please be aware that EPA's policy is that, unless otherwise prescribed by statute, members generally are appointed to two- or three-year terms.

ADDRESSES: Submit nominations to: Mark Joyce, Acting Designated Federal Officer, Office of Federal Advisory Committee Management and Outreach, U.S. EPA (1601M), 1200 Pennsylvania Avenue NW., Washington, DC 20460. You may also email nominations with subject line COMMITTEERESUME2011 to *joyce.mark@epa.gov.*

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Acting Designated Federal Officer, U.S. EPA; *telephone* (202) 564–2130; *fax* (202) 564–8129; *email joyce.mark@epa.gov.*

Dated: November 17, 2011.

Mark Joyce,

Acting Designated Federal Officer.

[FR Doc. 2011–30715 Filed 11–28–11; 8:45 am]

BILLING CODE 6560–50–P

EXPORT–IMPORT BANK OF THE UNITED STATES

Sunshine Act Meeting

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

Time and Place: Thursday, December 1, 2011 at 9:30 a.m. The meeting will be held at Ex-Im Bank in Room 1143, 811 Vermont Avenue NW, Washington, DC 20571.

Open Agenda Item: Item No. 1: Ex-Im Bank Advisory Committee for 2011.

Public Participation: The meeting will be open to public observation for Item No. 1 only.

FOR FURTHER INFORMATION CONTACT: For further information, contact: Office of the Secretary, 811 Vermont Avenue NW, Washington, DC 20571 (Number (202) 565–3336).

Lisa V. Terry,

Assistant General Counsel (Acting).

[FR Doc. 2011–30590 Filed 11–28–11; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting; Wednesday, November 30, 2011

Date: November 23, 2011.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Wednesday, November 30, 2011, which is scheduled to commence at 10:30 a.m. in Room TW–C305, at 445 12th Street SW., Washington, DC.

Item nos.	Bureau	Subject
1	Office of Engineering and Technology	TITLE: Amendment of Parts 2 and 95 of the Commission's Rules to Provide Additional Spectrum for the Medical Device Radiocommunication Service in the 413–457 MHz band SUMMARY: The Commission will consider a Report and Order that allocates spectrum in the 413–457 MHz band and adopts service and technical rules for Medical Micropower Networks, which rely on new types of implanted medical devices that use functional electric stimulation to, among other things, restore sensation, mobility, and function to paralyzed limbs and organs.
2	Wireless Tele–Communications, Wireline Competition and Consumer & Governmental Affairs.	Commission staff will provide a presentation on the Commission's recent broadband adoption efforts, including a first-of-its-kind national effort to address the barriers to broadband adoption, digital literacy and the employment skills gap.

The meeting site is fully accessible to people using wheelchairs or other mobility aids. Sign language interpreters, open captioning, and assistive listening devices will be provided on site. Other reasonable accommodations for people with disabilities are available upon request. In your request, include a description of the accommodation you will need and a way we can contact you if we need more information. Last minute requests will be accepted, but may be impossible to fill. Send an email to: *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (tty).

Additional information concerning this meeting may be obtained from Audrey Spivack or David Fiske, Office of Media Relations, (202) 418–0500; TTY 1–(888) 835–5322. Audio/Video coverage of the meeting will be broadcast live with open captioning over the Internet from the FCC Live web *page at www.fcc.gov/live.*

For a fee this meeting can be viewed live over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. To purchase these services call (703) 993–3100 or go to *www.capitolconnection.gmu.edu.*

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, Best Copy and Printing, Inc. (202) 488–5300; Fax (202) 488–5563; TTY (202) 488–5562. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio and video tape. Best Copy and Printing, Inc. may be reached by email at *FCC@BCPIWEB.com.*

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2011–30878 Filed 11–25–11; 4:15 pm]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1995 (''PRA''), 44 U.S.C. 3501 *et seq.,* the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of an existing information collection, as required by the PRA. On September 21, 2011 (76 FR 58513), the FDIC solicited public comment for a 60-day period on renewal of the following information collection: Request for Deregistration for Registered Transfer Agents (OMB No. 3064–0027). No comments were received. Therefore, the FDIC hereby gives notice of submission of its request for renewal to OMB for review.

DATES: Comments must be submitted on or before December 29, 2011.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.FDIC.gov/regulations/laws/federal/notices.html.*
- *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.
- *Mail:* Leneta G. Gregorie (202) 898–3719), Counsel, Room F–1084, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta G. Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal to Renew the Following Currently Approved Collection of Information

Title: Request for Deregistration for Registered Transfer Agents.

OMB Number: 3064–0027.

Frequency of Response: On occasion.

Affected Public: Business or other financial institutions.

Estimated Number of Respondents: 5.

Estimated Time per Response: 0.42 hours.

Total Annual Burden: 2.1 hours.

General Description of Collection: An insured nonmember bank or a subsidiary of such a bank that functions as a transfer agent may withdraw from registration as a transfer agent by filing a written notice of withdrawal with the FDIC as provided by 12 CFR 341.5.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and

clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 22nd day of November 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2011–30605 Filed 11–28–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Update to Notice of Financial Institutions for Which the Federal Deposit Insurance Corporation has been Appointed Either Receiver, Liquidator, or Manager

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Update Listing of Financial Institutions in Liquidation.

SUMMARY: Notice is hereby given that the Federal Deposit Insurance Corporation (Corporation) has been appointed the sole receiver for the following financial institutions effective as of the Date Closed as indicated in the listing. This list (as updated from time to time in the **Federal Register**) may be relied upon as ''of record'' notice that the Corporation has been appointed receiver for purposes of the statement of policy published in the July 2, 1992 issue of the **Federal Register** (57 FR 29491). For further information concerning the identification of any institutions which have been placed in liquidation, please visit the Corporation Web site at *http://www.fdic.gov/bank/individual/failed/banklist.html* or contact the Manager of Receivership Oversight in the appropriate service center.

Dated: November 21, 2011.

Federal Deposit Insurance Corporation

Pamela Johnson,

Regulatory Editing Specialist.

INSTITUTIONS IN LIQUIDATION

(In alphabetical order)

FDIC Ref. No.	Bank name	City	State	Date closed
10413	Central Progressive Bank	Lacombe	LA	11/18/2011
10414	Polk County Bank	Johnston	IA	11/18/2011

[FR Doc. 2011–30600 Filed 11–28–11; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB; Capital Plans; Final Agency Information Collection Activities

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), pursuant to its regulations, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in its regulations. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Cynthia Ayouch—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869. Board of Governors of the Federal Reserve System, Washington, DC 20551. OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Final approval under OMB delegated authority for the implementation of the following report:

Report title: Capital Assessments and Stress Testing.

Agency form number: FR Y–14A and FR Y–14Q.

OMB control number: 7100–0341.

Frequency: Annual and Quarterly.

Reporters: Large domestic bank holding companies (BHCs), that participated in the 2009 Supervisory Capital Assessment Program (SCAP) exercise.

Estimated annual reporting hours: FR Y–14A: Summary, 15,580 hours; Macro scenario, 589 hours; Counterparty credit risk (CCR), 2,292 hours; Basel III, 380 hours; and Regulatory capital instruments, 380 hours. FR Y–14 Q: Securities risk, 760 hours; Retail risk, 431,908 hours; Pre-provision net revenue (PPNR), 47,500 hours; Wholesale corporate loans, 3,840 hours; Wholesale commercial real estate (CRE) loans, 4,560 hours; Trading, private equity, and other fair value assets (Trading risk), 41,280 hours; Basel III, 1,520 hours; and Regulatory capital instruments, 3,040 hours.

Estimated average hours per response: FR Y–14A: Summary, 820 hours; Macro scenario, 31 hours; CCR, 382 hours; Basel III, 20 hours; and Regulatory capital instruments, 20 hours. FR Y–14 Q: Securities risk, 10 hours; Retail risk, 5,683 hours; PPNR, 625 hours; Wholesale corporate loans, 60 hours; Wholesale CRE loans, 60 hours; Trading risk, 1,720 hours; Basel III, 20 hours; and Regulatory capital instruments, 40 hours.

Number of respondents: 19.

General description of report: The FR Y–14A and Q are authorized by section 165 of the Dodd-Frank Act which requires the Federal Reserve to ensure that certain BHCs and nonbank financial companies supervised by the Federal Reserve are subject to enhanced risk-based and leverage standards in order to mitigate risks to the financial stability of the United States. 12 U.S.C 5365. Additionally, Section 5 of the BHC Act authorizes the Board to issue regulations and conduct information collections with regard to the supervision of BHCs. 12 U.S.C. 1844.

As these data will be collected as part of the supervisory process, they are

subject to confidential treatment under exemption 8 of the Freedom of Information Act. 5 U.S.C. 552(b)(8). In addition, commercial and financial information contained in these information collections may be exempt from disclosure under Exemption 4. 5 U.S.C. 552(b)(4). Disclosure determinations would be made on a case-by-case basis.

Abstract: During the years leading up to the recent financial crisis, many BHCs made significant distributions of capital, in the form of stock repurchases and dividends, without due consideration of the effects that a prolonged economic downturn could have on their capital adequacy and ability to continue to operate and remain credit intermediaries during times of economic and financial stress. In 2009, the Board conducted the SCAP, a ''stress test'' of 19 large, domestic BHCs. The SCAP was focused on identifying whether large BHCs had capital sufficient to weather a more-adverse-than-anticipated economic environment while maintaining their capacity to lend. In early 2011, the Federal Reserve continued its supervisory evaluation of the resiliency and capital adequacy processes of the same 19 BHCs through the Comprehensive Capital Analysis and Review (CCAR 2011). The CCAR 2011 involved the Federal Reserve's forward-looking evaluation of the internal capital planning processes of the BHCs and their anticipated capital actions in 2011, such as increasing dividend payments or repurchasing or redeeming stock.

On June 17, 2011, the Federal Reserve published the Capital Plan rulemaking (or proposed rule) in the **Federal Register** for public comment (76 FR 35351) that would revise the Board's Regulation Y to require large BHCs to submit capital plans to the Federal Reserve annually among other things. The public comment period for the capital plan rule ended on August 5, 2011. In connection with submissions of capital plans to the Federal Reserve, BHCs would be required, pursuant to proposed section 225.8(d)(3), to provide certain data to the Federal Reserve. At the time of the proposed rule, the Federal Reserve did not have sufficient detail about the data to be submitted by the BHCs under proposed section 225.8(d)(3). For this reason, the Federal Reserve put forth this proposal to collect the data to support the ongoing CCAR exercise, which would fulfill the data collection contemplated under proposed section 225.8(d)(3).

As proposed, the FR Y–14A will collect annually BHCs' quantitative projections of balance sheet assets and liabilities, income, losses, and capital across a range of macroeconomic scenarios and qualitative information on methodologies used to develop internal projections of capital across scenarios. One or more of the scenarios would include a market shock that the BHCs would assume when making trading and counterparty loss projections. Also, as proposed, the FR Y–14Q will collect detailed data on BHCs' various asset classes and PPNR for the reporting period, which would be used to support supervisory stress test models and for continuous monitoring efforts, on a quarterly basis.[1] These data will be used to assess the capital adequacy of large BHCs using forward-looking projections of revenue and losses. In addition, these data will be used to help inform the Federal Reserve's operational decision making as the agency moves ahead with implementing the capital plan rulemaking.

Under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act), the Federal Reserve is required to issue regulations relating to stress testing (DFAST) for certain BHCs and nonbank financial companies supervised by the Board. It is expected that any reporting requirements associated with DFAST will be incorporated into the new FR Y–14A/Q information collection.

Current Actions: On August 31, 2011, the Board granted initial approval of this proposal. Notice of the proposed action was published in the **Federal Register** on September 7, 2011 (76 FR 55288); the comment period expired on November 7, 2011.

General Summary of Public Comments

The Board received comments from 11 BHCs, 5 trade associations, and a software vendor by letter, email, and orally through outreach calls conducted with prospective respondents. Most of the comments received requested clarification of the instructions for information to be reported, or were technical in nature. Response to these comments will be addressed in the final FR Y–14 reporting instructions. Substantive comments received either addressed the FR Y–14 collection in general, or addressed specific proposed reporting schedules. The final reporting schedules and instructions that incorporate the comments submitted by the public and that were approved by the Board have been provided to the respondent BHCs. The substantive comments are addressed below.

Detailed Discussion of Public Comments and Federal Reserve Responses

The following is a detailed discussion of aspects of the proposed FR Y–14 collection for which the Federal Reserve received one or more substantive comments and the Federal Reserve's responses to the comments received.

A. General

In their combined comments, four trade groups provided support for the publication of the proposed data schedules for comment and agreed with the relevance of much of the data sought to discern the capital distribution process. However, they expressed concerns with the substance of data requested on several components of the schedules and also sought further clarification. Their substantive comments are discussed below. Another trade group expressed support for the proposed data schedules as they apply to the 19 respondent BHCs, both in terms of the breadth and the depth of the data requested. However, they strongly cautioned against imposing similar reporting requirements on smaller community banks.

The Federal Reserve proposed that respondents would submit a data schedule for any portfolio that meets certain materiality thresholds, which are generally defined as those portfolios with asset balances greater than $5 billion or asset balances relative to Tier 1 capital greater than 5 percent on average for the four quarters preceding the reporting quarter. A number of commenters requested an increase of these materiality thresholds and to allow the BHCs to exclude certain portfolios on a case-by-case basis.

In selecting the materiality thresholds, the Federal Reserve weighed the benefit of minimizing burden to BHCs against obtaining comprehensive data, which will allow the Federal Reserve to consistently produce supervisory estimates of loss for each BHC under a given scenario. The Federal Reserve believes that the proposed materiality thresholds strike the right balance between the two considerations and, therefore, will implement the materiality thresholds as proposed.

The proposal stated that the Federal Reserve expects to make the final data schedules available to respondents in late November and to receive completed FR Y–14Q data submissions by mid-December and FR Y–14A data submissions by early January. Several

[1] For some schedules, except as noted in the discussion of comments, BHCs will be required to submit both quarterly and annual schedules for third quarter data.

commenters expressed concerns about the short turnaround time to submit the data once the data schedules are finalized, particularly given the granularity of the data requested.

The timeline for the initial data submission largely reflects the timeline for implementation of the proposed capital plan rule. As stated in the initial **Federal Register** notice and in the proposed FR Y–14Q instructions, the quarterly data will be used to produce supervisory model estimates, which will be a key input to the CCAR process. The Federal Reserve weighed the benefit of providing additional time to complete the data submission against the need to have sufficient time to validate the data and produce supervisory model estimates based on the submitted data in order to provide timely responses to BHCs to their Capital Plan. After further consideration, the Federal Reserve will implement the timeline as proposed. However, in response to other comments discussed below, the Federal Reserve will implement several changes to the data schedules to reduce burden.

Two commenters further suggested that respondents should be exempt from submitting the fourth quarter 2011 data given a later filing deadline for the third quarter data. The quarterly data collection will help the Federal Reserve enhance its supervisory models and support ongoing supervisory activities. The BHCs will be required to submit the fourth quarter 2011 data 45 days after the quarter ends or approximately two months after the third quarter 2011 data are due. The Federal Reserve will implement a February 14, 2012, due date for the fourth quarter FR Y–14Q as proposed.

Several commenters requested clarification on the reporting of particular data items when the BHCs do not maintain the data in their systems. The same commenters suggested either eliminating the particular data items or allowing BHCs to leave the data items blank. In response to other comments discussed below, the Federal Reserve will implement several changes to the data schedules to reduce burden and to ease the completion of the data schedules.

A couple of commenters suggested a staggered approach to data collection where some data are collected for the initial submission, but other data, particularly historical data, are collected in future quarters. They suggested staggered due dates to lessen the burden for the initial submission, given the short turnaround time, while allowing the Federal Reserve to collect data in the future.

The data reported on the FR Y–14Q schedules, which include, in some cases, a one-time request for historical data, are essential for supervisory models and allow the Federal Reserve to produce supervisory estimates consistently across all BHCs. However, in response to other comments discussed below, the Federal Reserve will implement several changes to the data schedules to reduce burden.

Several commenters stated that there is a significant overlap between certain FR Y–14 data schedules and data currently provided by large national banks to their banking regulator. Other commenters noted an overlap between certain FR Y–14 data schedules (e.g. Securities) and other existing Federal Reserve supervisory data collections. Upon implementation, BHCs will be required to submit the FR Y–14 schedules. The Federal Reserve does not believe that other data collections overlap with the FR Y–14. Upon implementation, the FR Y–14 data schedules would replace the Federal Reserve's ongoing supervisory data collection of a similar nature for all 19 BHCs.

Several commenters noted inconsistencies in the reporting requirements for loans classified as held for sale and held for investment accounted for under a fair value option. Recognizing the inconsistencies noted by the commenters, the Federal Reserve will add new data items to the Wholesale, Retail, and Summary schedules to ensure the consistent treatment of these assets across portfolios. Recommended changes to the affected schedules are described below.

One commenter noted that BHCs should have the opportunity to review, provide feedback, and amend the market shocks, particularly as it applies to the CCAR 2012 exercise. The Federal Reserve does not agree that it would be beneficial to engage the BHCs in an iterative process to determine the market shocks provided. BHCs will have the opportunity to provide their own shocks in the BHC specified scenarios.

The trade groups expressed concern about the delay in the Federal Reserve's responses to technical and clarifying questions and urged the Federal Reserve to clearly set forth a robust and transparent process for responding to future inquiries in a timely manner. The Federal Reserve will implement an enhanced and streamlined process for answering these types of questions in a timely manner during the CCAR 2012 exercise.

B. Trading Risk Schedule

One commenter suggested, citing a potentially heavy reporting burden, allowing BHCs to interpolate the data for the Trading Risk schedule using the data produced on a regular basis for internal risk reports, where appropriate. The Federal Reserve recognizes the potential significant reporting burden and will allow BHCs to interpolate the data to map into the Trading Risk schedule.

Several commenters noted structural problems with the equities and commodities spot/volatility grids in the proposed schedule and urged the Federal Reserve to make modifications to the schedule. Specifically, they argued that the range of shocks defining the grid go beyond those that would reasonably be expected given historical volatility and that some of the spot/volatility combinations were not reflective of the historical relationship between prices and volatility. The Federal Reserve recognizes the commenters' concern and will adjust the range of shocks to be consistent with the range of historical volatility across the term structure. Further, the Federal Reserve will remove the reporting requirements for the combinations of spots and volatility points that would be inconsistent with the historical distribution of combinations.

Two commenters suggested that the commingling of directional risk and basis risk in the DV01 worksheet of the Trading Risk schedule obfuscates the interest rate exposure, and that it would be more appropriate to distinguish between the risks. The Federal Reserve agrees with the comment, and will separate the base curves and basis risk in the tables so that they are clearly differentiated.

Several commenters suggested changes to the Trading Risk schedule, including increasing granularity or adding risk metrics in the Trading Risk schedule. The Federal Reserve will not make such changes at this time but will consider those comments for potential future revisions to the schedule.

One commenter suggested adding business line materiality thresholds, in addition to the BHC-level materiality thresholds described above, because it is operationally difficult to capture small amounts of risk in business lines where risk is not the main risk factor. The commenter further proposed not completing the exposures portion of the worksheets for immaterial risk (e.g. less than 5 percent of total for a given risk exposure metric). The Federal Reserve believes that the exposure should be aggregated at a firm-level, not by

business line, and therefore, recommends using existing minimum thresholds in the proposed worksheets. The estimated aggregate exposure of positions not included should be less than the stated minimum threshold for each table.

The initial **Federal Register** notice indicated that the as-of date for the Trading Risk schedule for the third quarter, the annual CCR schedule, and the Trading Risk worksheet in the Summary schedule would be communicated to the BHCs sometime in the third or fourth quarter of each year. Two commenters noted that the BHCs should be permitted to submit data using the BHCs regular weekly report as long as this date falls during the week of the official as-of date. Another commenter suggested that the Federal Reserve should shorten the time period from which the as-of date would be selected.

The Federal Reserve agrees with both comments and will allow BHCs to submit the trading data as of the most recent date that corresponds to the regular reporting cycle that falls prior to the official trading as-of date. In addition, the Federal Reserve will communicate the as-of date in the fourth quarter of each year.

C. CCR Schedule

Several commenters indicated that there is significant burden associated with the requirement to run multiple scenarios and specifications to capture Expected Exposure (EE) profiles (i.e. running two separate specifications for each of the unstressed EE profile, stressed EE profile using the BHC shock scenario, and stressed EE profile using the Federal Reserve shock scenario) to complete the CCR schedule. The Federal Reserve acknowledges the burden placed on BHCs of running all six combinations of scenarios and specifications and the resulting effects on data quality. Therefore, the Federal Reserve will remove two of the three specified EE profiles under the Federal Reserve specification, namely, the unstressed EE profile and stressed EE profile using the BHC shock scenario. Unstressed EE profiles as well as EE profiles using both the BHC and Federal Reserve shock scenarios are required for the BHC specification. In addition, the stressed EE profile using the Federal Reserve shock scenarios and the Federal Reserve specification is also required.

One commenter stated that the ''Trading IDR losses from securitized products'' data item should not include losses from asset-backed securitized (ABS) products which typically have multiple-name underlying reference obligations (such as residential mortgage-backed securities (RMBS) or commercial mortgage-backed securities (CMBS)). The dominant part of the risk in these products (when held in the trading book and marked to market) is general market risk, and is therefore fully captured as mark-to market losses in the trading book loss calculation. The commenter noted that this view is also reflected in the proposed rule on the *Capital Adequacy Guidelines for Bank Holding Companies: Market Risk Measure* (Appendix E of 12 CFR part 225), which does not propose calculating an incremental default risk measure for these products.

The Federal Reserve disagrees with the comment and believes that in order to fully capture all default and impairment risk for assets under a given scenario, all securitization structure types, including ABS, CMBS, and RMBS, should be included in the calculation. The underlying assets incur additional default, which translates into impairment to the bonds. The additional incremental loss above and beyond the market risk shock should be included in the calculation.

One commenter noted that in a prior CCR submission, the BHC provided additional columns and rows of data in order to better explain the portfolio. The commenter asked if they could continue to voluntarily provide this additional explanatory data, and if so, whether the FR Y–14 reporting format would allow the submission of such additional data. The Federal Reserve agrees and appreciates BHCs providing any additional data to give clarity to the portfolio analysis. The Federal Reserve will create a separate tab and add a separate column on the existing schedule for BHCs to provide additional explanatory data at their option.

D. Retail Risk Schedule

One commenter suggested that non-purpose securities-based lending should be excluded from the Other Consumer Loans worksheet, given that the risk characteristics of this lending type are markedly different from other loans reported in the worksheet. In referencing the relevant corresponding data item collected on the FR Y–9C[2], the proposed worksheet indicates that securities-based lending is included in the definition of other consumer loans. The Federal Reserve agrees with the comment and will exclude non-purpose securities-based lending from the definition of other consumer loans.

One commenter indicated that the difference in segment breaks across retail schedules presents a logistical challenge, and recommended creating consistent segmentations across portfolios. The Federal Reserve carefully weighed the need for consistency against potential added burden and the need to capture risk characteristics of each portfolio in selecting segment breaks, and will maintain the segment breaks as proposed.

In response to the comments noted above related to inconsistent treatment of held for sale and held for investment loans accounted for under the fair value option, the Federal Reserve will replace a segment variable, ''SOP 03–3'' with a variable for ''Accounting Treatment'' to the domestic mortgage schedule. The segment will have an option for Held for Investment—ASC 310–30[3] Purchase Impaired, Held for Sale/Held for Investment under a Fair Value Option or Other.[4]

One commenter suggested that an additional segment should be added in the Small and Medium Enterprise schedules to separate lines of credit from loans. The Federal Reserve will not make a change at this time as a full assessment of the effect of such a change on burden has not been completed. However, the Federal Reserve will consider this comment for potential future updates to the schedules.

E. Wholesale Schedule (CRE data)

Several commenters indicated that reporting data on cross-collateralized loans as requested for the CRE collection would present a significant challenge. Some commenters suggested that the due date for the initial submission of CRE data should be moved to December 31 in order to allow the BHCs to make necessary changes. The commenters also suggested that the definition for the data item that captures the loan numbers of cross collateralized loans should be changed from ''cross collateralized and/or cross defaulted'' to ''cross collateralized *and* cross defaulted.'' Finally, they commented that loans that have less than $1 million committed should be excluded for the purpose of cross-collateralization, given its statistical irrelevance and the significant operational challenges.

The Federal Reserve will retain the initial CRE submission deadline of December 15, consistent with the

[2] The Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128).

[3] ASC 310–30 is the new FASB codification for SOP 03–3.

[4] Other includes all mortgage loans that are not reported under fair value accounting or under ASC 310–30.

deadline for all other quarterly schedules. However, in response to comments, the Federal Reserve will revise the CRE collection so that BHCs will only report the loan numbers of other cross collateralized loans, not other cross defaulted loans. In addition, for loans less than $1 million that are cross collateralized with loans that have commitments greater than $1 million, the Federal Reserve will require BHCs to report only three data items—Loan Number, Outstanding Balance, and Committed Balance. All other data items will be optional. However, as proposed, BHCs will report all loans greater than $1 million based on committed balance.

One commenter suggested that by not capturing non-CRE collateral, the data resulting from the proposed CRE schedule would overstate loan-to-value ratios. The Federal Reserve agrees with the comment, and will add an optional data item for BHCs to report cash and marketable securities where a BHC has a first perfected security interest.

In response to the comments noted above related to inconsistent treatment of held for sale and held for investment loans accounted for under a fair value option, the Federal Reserve will add mandatory data items to capture the reserve applied to the loan subject to ASC 310–10, the ASC 310–30 related adjustment for debt securities acquired in a transfer and the fair value adjustment on loans classified as held for sale and held for investment at fair value.

F. Wholesale Schedule (Corporate Loan Data)

Many commenters expressed a concern that the significant amount of detail (44 data items) proposed for collection of corporate loan facilities in the Corporate Loan schedule will represent a significant burden for BHCs. In response to these comments, the Federal Reserve will modify the Corporate Loan collection to implement a $1 million threshold for certain ''other'' loan categories and to exclude unplanned overdraft and loans for purchasing and carrying securities (secured or unsecured).

In response to the comments noted above related to inconsistent treatment of held for sale and held for investment loans accounted for under a fair value option, the Federal Reserve will replace the proposed mandatory field ''Other Than Temporary Impairment (OTTI)'' which captured only credit impairment charges with a mandatory data item, ''Fair Value Adjustments (FVA)'' to capture any fair value adjustments on held for sale and held for investment loans accounted for under a fair value option.

G. PPNR Schedule

Several commenters expressed concerns about the level of granularity requested in the PPNR schedule and their ability to provide the data within the timeframe for the initial submission. The commenters expressed concerns about the PPNR Submission/Projections worksheet, particularly related to the section on net interest income by business segment, noting that historical and projected periods would be challenging to map to existing internal management reporting systems. Commenters noted that any estimates would have significant data quality concerns. In addition, they noted that data on the PPNR Metrics worksheet would be difficult to provide on a forward looking and historical basis. The commenters also expressed concerns about their ability to provide data as requested on the Net Interest Income (NII) worksheet, and requested that BHCs should have an option to submit either the PPNR Submission worksheet or the NII worksheet, not both. Further, several commenters suggested that materiality thresholds should be considered for data items collected in the PPNR schedule as they are for balance sheet items.

In response to these comments, the Federal Reserve will implement several revisions to the PPNR worksheets. First, the instructions will be modified to underscore that BHCs for which deposits comprise less than one third of total liabilities for any reported period need only complete the PPNR Submission/Projections worksheets and the related portion of the PPNR Metrics worksheets. Such BHCs would designate the PPNR Submission/Projections worksheets as ''Primary Net Interest Income'' and the NII worksheet as ''Not Applicable.'' Second, all other BHCs will specify either the PPNR Submission/Projections or the NII worksheet as ''Primary Net Interest Income'' and the other as ''Supplementary Net Interest Income'' through a pull down menu at the top of each worksheet. Note that this designation will refer only to the NII portion of the worksheets; all other items on the PPNR Submission worksheet and the related portion of the PPNR Metrics worksheet must be completed.

The schedule designated as ''Primary Net Interest Income'' and the related portions of the PPNR Metrics worksheet will be the main sources of analysis and assessment by the Federal Reserve. Therefore, the Federal Reserve will require that BHCs continue to complete all data items in the primary schedule and the related portion of the PPNR Metrics worksheet. The Federal Reserve will require that BHCs also provide additional information in the supporting documentation for the PPNR schedule, including the discussion of consistency of a given schedule with the BHC's external reporting and internal reporting and forecasting; a description of broadly-defined types of business models they currently use (*e.g.* Asset/Liability, Relationship, Business Product/Services/Activity and others); high-level descriptions of motivations for their choices of models for conducting business, reporting (internal/external) and forecasting profit and loss result; benefits/challenges associated with those models; and methodologies employed. For purposes of the FR Y–14 schedules, once a BHC makes a ''primary'' designation, it will continue to treat a given schedule as ''primary'' for all historical and forecast periods.

The ''Supplementary Net Interest Income'' worksheet and the related portion of the PPNR Metrics worksheet will be used as supplementary sources of analysis and assessment by the Federal Reserve. BHCs will provide the data for the ''supplementary'' worksheet on a ''best efforts'' basis and complete this worksheet to the fullest extent possible. It is expected that all data items identified with a number (e.g. 6), but not a number and letter (e.g. 6A) will be completed. In the supporting documentation, the BHCs will provide information on which data items or areas were particularly challenging to complete and reasons for the challenge.

Third, the Federal Reserve will add a materiality threshold for the business segments within the PPNR Submissions/Projections worksheets. For each of the 10 major segments, BHCs will be required to report the PPNR Submission/Projections and PPNR Actual/Projection data only if revenues for that segment relative to total revenues exceeded 5 percent in any of the last four quarters preceding the first projection period requested on the PPNR schedule. BHCs will report all immaterial business segment revenue in a separate catch-all data item on the PPNR Submission/Projections worksheet and report no data for those immaterial segments on the PPNR Metrics worksheet. Additionally, if the total immaterial business segment revenue relative to total revenue is greater than 10 percent in any of the last four quarters preceding the first projection period requested on the PPNR schedule, the BHCs must report

actuals/projections for the largest business segment among the immaterial business segments for all quarters in the PPNR Submissions/Projections and PPNR Metrics worksheets. Note that for purposes of the PPNR schedule, revenue is defined as the sum of NII and non-interest income adjusted for selected exclusions.

Finally, the Federal Reserve will add materiality thresholds for international breakouts by region based on whether international revenue exceeded 5 percent of total revenue for a given BHC in any of the last four quarters preceding the first projection period requested on the PPNR schedule. Changes implemented for the PPNR schedule will also apply to the relevant PPNR worksheets in the Summary schedule.

H. Regulatory Capital Instruments and Basel III Schedules

Two commenters raised concerns about potential duplicative data requests related to Basel III with a potential overlap with the recent Basel Committee's Basel III Implementation Monitoring Quantitative Impact Study (QIS) data collection request. There are key differences between FR Y–14 Basel III annual and quarterly schedules and the template used for the QIS (the most recent submission of which was due in October 2011). Whereas the Basel Committee intends to collect actual point-in-time data twice a year as of the second and fourth quarters, the annual FR Y–14 Basel III schedule will collect each year actual balances as of the third quarter in addition to forecasted fourth quarter balances for all future periods through year-end 2016. In addition, the Basel III schedule will collect data and supplemental information on material planned actions that the BHC intends to pursue over that same forecasted period to address the impact of Basel III on the BHC's capital, risk-weighted assets, and/or leverage exposures.

The quarterly Basel III schedule will be used to conduct quarterly monitoring of each BHC's progress against the forecasted data provided on the annual Basel III schedule. The data for the quarterly schedule will not be as granular as the data collected in the annual schedule, and will only be collected in quarters in which the annual schedule is not collected.[5] Specifically, the quarterly schedule collects quarterly point-in-time total balances only for Tier 1 Common, Tier 1 Capital, Risk-weighted Assets and Leverage Exposures, including a few select components of those balances.

One commenter requested the collection of additional information on the annual and quarterly Basel III schedules. The commenter stated that fully understanding the Basel treatment for regulatory capital instruments is crucial in order to assess the quality of each instrument within a BHC's capital inventory (and the totality of the capital instrument inventory), under the Basel I and Basel III capital frameworks. Since Basel treatment is dependent on instrument-specific characteristics, they suggested modification of the annual and quarterly worksheets such that the BHC may specify the relevant Basel treatment, especially in cases where no CUSIP[6] number or other internal identification number is provided.

Specifically they suggested adding a column for Basel III treatment to the Redemptions Q3 20YY worksheet and two columns for Basel I and Basel III treatments, respectively, to the Redemptions 4QYY–4QZZ worksheet in the FR Y–14A schedule. The commenter also suggested adding two columns for Basel I and Basel III Treatments, respectively, to the Planned Action Detail from the CCAR Submission section and also to the Planned Redemption Details from the CCAR Submission and/or Report Missing Planned Redemption section of the Confirm Proposed Redemption worksheet. The commenter stated that they believe these data are necessary to analyze the specific instrument that the BHC has redeemed or plans to redeem (depending on whether the worksheet collects actual or projected data).

In addition, in order to fully analyze and assess the composition of Tier 1 and Tier 2 capital, the commenter recommended adding a column titled ''Capital amount redeemed'' (between proposed columns R and S) to the Confirm Proposed Redemptions worksheet of the quarterly Regulatory Capital Instruments schedule. The commenter believes this change is necessary in order to collect information on the amount of the instrument actually redeemed. Although column L collects information on the amount planned to be redeemed, this additional field is necessary in the event the actual amount executed differs from the amount that was originally planned.

The Federal Reserve agrees with these comments, and will implement the suggested changes to the Regulatory Capital Instruments and Basel III annual and quarterly schedules.

I. Summary Schedule

One commenter requested the addition of new data items related to repurchase reserve/liability for representations and warranties to the Income Statement worksheet in the Summary schedule. Specifically they requested the collection of the following data items (4 reported data items and 1 data item calculated by an imbedded formula):

- New data item 59, ''Reserve, prior quarter''
- New data item 60, ''Provisions during the quarter''
- New data item 61, ''Net charges during the quarter''
- New data item 62, ''Reserve, current quarter'' (This data item would be calculated and not reported by the BHC: sum of items 59 and 60 less item 61.)
- New data item 63, ''Line item of PPNR Submission/Projections worksheet where repurchase provision is recorded''

The commenter noted that these data items would allow supervisors to view the evolution of BHCs' projections of repurchase reserve/liability for representations and warranties.

The Federal Reserve recognizes that while BHCs have taken steps to reduce the risk associated with representations and warranties, this issue has not been fully resolved since CCAR 2011. The Federal Reserve agrees with these comments and will implement the suggested changes to the Income Statement worksheet in the Summary schedule. Note that these data items were also reported by BHCs in their CCAR 2011 submission and do not duplicate other data reported on this or any other information collection.

One commenter noted that because information on settlements related to representation and warranty breaches in both the Retail Repurchase and Historical Operational Risk worksheets of the Summary schedule is being collected that this may result in double counting related exposures. The Federal Reserve agrees with this comment and will clarify the instructions for the Summary schedule to ensure the representation and warranty breaches captured in the Retail Repurchase worksheet are not captured in the Historical Operational Risk worksheet.

One commenter requested clarification of the difference between the C&I Small Business (Graded) and Small Business (Scored/Delinquency Managed) data items on the Income Statement and Balance Sheet worksheets of the Summary schedule.

[5] Likewise, the data for the Regulatory Capital Instruments quarterly schedule will only be collected in quarters in which the annual schedule is not collected.

[6] CUSIP refers to the Committee on Uniform Security Identification Procedures. This 9-character alphanumeric code identifies any North American security for the purposes of facilitating clearing and settlement of trades.

The Federal Reserve will better align these worksheets with other regulatory report loan classification schemes, thereby ensuring no overlap in reporting requirements across FR Y–14 schedules.

Two commenters requested a change to the allowance for loan and lease losses (ALLL) referenced in the Income Statement worksheet of the Summary schedule to an allowance for credit loss (ACL) reference, as that would be in line with their practice of provisioning for ALLL and for an allowance for unfunded credit commitments. In order to provide greater distinction between the ALLL and that for off-balance sheet credit exposures, the Federal Reserve will add a memorandum item to the Balance Sheet worksheet and adjust the Income Statement worksheet to capture a breakout of this component. These adjustments will allow BHCs to provide both pieces of the total allowance.

One commenter noted that, in addition to net charge-offs, they provision for neutral items and that the allowance roll-forward doesn't allow the BHC to record these provision-neutral impacts. The Federal Reserve agrees with this comment and will add a data item to the ALLL section to capture non-provision or charge-off related changes to the ALLL, making the section more consistent with Schedule HI–B, Part II of the FR Y–9C.

One commenter raised concerns about the legal implications of disclosing estimated litigation losses on a granular basis on the Operations Risk worksheet in the Summary schedule. The Federal Reserve notes that a number of data items collected on the FR Y–14A and Q, including respondents' projections, may be considered trade secrets or confidential supervisory information. As such, respondents' estimates of litigation losses are expected to remain confidential.[7]

In response to the comments noted above related to the inconsistent treatment of held for sale and held for investment loans accounted for under a fair value option, the Federal Reserve will add a Fair Value Loan worksheet, and a change to the income statement instructions to capture the marks taken on fair value loans. The Fair Value Loan worksheet will capture the aggregate fair values and unpaid principal balances of loans classified as held for sale or held for investment measured at fair value in the following asset classes: first lien mortgage, home equity line of credit, credit card, auto loans and leases, student loans, small business loans, and other consumer loans. In addition, the instructions for the Summary schedule will be clarified to indicate that any losses related to loans held for sale or held for investment with the fair value option should be reported on the Income Statement worksheet of the Summary schedule under ''Other Losses.''

Finally, the Federal Reserve will remove data items related to mortgage servicing rights (MSRs) from the Trading worksheet of the Summary schedule to further reduce burden on respondents. All MSR-related earnings, including those captured in the trading book, will be reported on the PPNR worksheet of the Summary schedule.

Board of Governors of the Federal Reserve System.

November 21, 2011.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 2011–30666 Filed 11–28–11; 8:45 am]

BILLING CODE 6210–01–P

[7] The confidentiality of information submitted to the Board under the data schedules and related materials shall be determined in accordance with applicable exemptions under the Freedom of Information Act (5 U.S.C. 552) and the Board's Rules Regarding Availability of Information (12 CFR part 261).

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Request for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC or Commission).

ACTION: Notice and request for comment.

SUMMARY: The information collection requirements described below are being submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act (PRA). The FTC is seeking public comments on proposed information requests to beverage alcohol advertisers that will seek information concerning, among other things, sales and marketing expenditures, compliance with voluntary advertising placement provisions, digital marketing practices and data collection, and lesser-known media programs.

DATES: Comments must be received on or before December 29, 2011.

ADDRESSES: Interested parties may submit written comments by following the instructions in the ''Request for Comments'' part of the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the collection of information and supporting documentation should be addressed to Janet M. Evans, Attorney, 202–326–2125, or Carolyn L. Hann, Attorney, 202–326–2745, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission.

SUPPLEMENTARY INFORMATION: The FTC has previously published reports on voluntary advertising self-regulation by the alcohol industry in September 1999, September 2003, and June 2008.[1] The data contained in the reports were based on information submitted to the Commission, pursuant to compulsory process, by U.S. beverage alcohol advertisers. The FTC has authority to compel production of this information from advertisers under Section 6 of the Federal Trade Commission Act (FTC Act), 15 U.S.C. 46. The Commission believes that it is in the public interest to: (1) Collect updated data from alcohol advertisers on sales and marketing expenditures, compliance with voluntary advertising placement provisions, digital marketing practices and data collection, and lesser-known media programs; and (2) publish a report on the data obtained.

Under the PRA, 44 U.S.C. 3501–3521, federal agencies must obtain approval from OMB for each collection of information they conduct or sponsor. ''Collection of information'' means agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. 44 U.S.C. 3502(3), 5 CFR 1320.3(c).

On February 25, 2011, the Commission sought comment on the information collection requirements associated with this proposal. 76 FR 10596. (60-Day Notice). As required by OMB regulations, 5 CFR part 1320, the FTC is providing this second opportunity for public comment while seeking OMB approval for the collection of information.

A. Public Comments/Consultation Outside the Agency

The FTC received 71 comments in response to the 60-Day Notice. Of these, four comments favored and substantively addressed the proposed data collection. These comments were submitted by: (1) State Attorneys General representing 23 states and one territory [2] (State AG); (2) the Center for

[1] See FTC, *Self-Regulation in the Alcohol Industry* (Sept. 1999), available at *http://www.ftc.gov/reports/alcohol/alcoholreport.shtm;* FTC, *Alcohol Marketing and Advertising* (Sept. 2003), available at *http://www.ftc.gov/os/2003/09/alcohol08report.pdf;* and FTC, *Self-Regulation in the Alcohol Industry (*June 2008) (''2008 FTC Alcohol Report''), available at *http://www.ftc.gov/os/2008/06/080626alcoholreport.pdf.*

[2] The State AGs represented: Arizona, Connecticut, Delaware, Guam, Hawaii, Idaho, Illinois, Iowa, Maryland, Massachusetts, Mississippi, Nevada, New Hampshire, New Mexico,

Alcohol Marketing and Youth (CAMY); (3) the Center for Digital Democracy (CDD); [3] and (4) University of Connecticut School of Medicine (UConn Medical School). One comment, submitted by The Marin Institute, offered substantive recommendations but also expressed concerns about self-regulation.[4] Two additional comments offered limited recommendations regarding the proposed data collection.[5] The remaining 64 comments did not substantively address the proposed data collection.[6]

1. General Support for the Data Collection

In its 60-Day Notice, the FTC sought comments regarding whether the proposed collection of information is necessary for the proper performance of the functions of the FTC.[7] The State AG and CAMY comments expressed strong support for the FTC's proposed data collection. Specifically, they stated that this information was essential to the FTC's performance of its regulatory duties and in the public interest.

2. Suggestions for Improvements to Proposed Information Collection

In its 60-Day Notice, the FTC invited comments regarding ways to enhance the quality, utility, and clarity of the information to be collected.[8] The FTC received substantive suggestions for enhancing its proposed collection of alcohol advertising data regarding the following specifications: (1) Expenditure data; (2) advertising placement; and (3) digital marketing and data collection. The FTC also received several suggestions that did not fall within a particular specification.

a. Expenditure Data

In its 60-Day Notice, the FTC stated that it would seek company data regarding expenditures to advertise and promote beverage alcohol in measured and non-measured media. The State AG and CAMY comments exhorted the FTC to seek advertising and promotional expenditures from the alcohol industry on an ''ongoing and regular basis,'' rather than intermittently. Both comments explained that the media landscape is changing daily. To understand how and where industry is advertising and to what extent the youth are exposed, the comments argued, the FTC should obtain these data from industry every two to three years, if not annually.[9] The FTC will consider this recommendation in the course of developing its report.

b. Advertising Placement Issues

Until very recently, the voluntary codes of the Beer Institute, the Distilled Spirits Council of the United States, and/or the Wine Institute (collectively, ''voluntary codes'') each stated that alcohol advertising should be placed in television, radio, and print communications only where at least 70% of the audience is reasonably expected to be above the legal purchase age (the ''70% placement standard'').[10] In the 60-Day Notice, the FTC stated that it planned to seek data on advertising placement, including industry compliance with the 70% placement standard.

The State AG and CAMY comments encouraged the FTC to recommend that the voluntary codes increase their placement standard from 70% to 85%.[11] Citing a 2004 recommendation by the Institute of Medicine's Committee on Developing a Strategy to Reduce and Prevent Underage Drinking, the State AG and CAMY comments argued that youth exposure to alcohol advertising on television has grown since 2004 at a rate faster than that of adults or young adults. The State AG and CAMY comments also highlighted as an example Beam Global Spirits & Wine Inc., an alcohol company that since 2007 has voluntarily and gradually increased its placement standard to 85% for its aggregate average by brand and by medium. The FTC will consider these recommendations in the course of developing its report.

The State AG and CAMY comments recommended that the FTC seek brand-specific placement data and provide a brand analysis in its upcoming report. The UConn Medical School comment also recommended that the FTC seek data in connection with specific ads or ad campaigns. The Commission's compulsory process orders to alcohol companies will, as they have in the past, collect advertising placement data for each individual ad for individual brands. In the course of reviewing these data, the FTC will evaluate whether specific brands have placement compliance problems. Nonetheless, because Section 6(f) of the FTC Act, 15 U.S.C. 46(f), protects confidential commercial information that is submitted to the agency, the Commission cannot publicly identify advertising data on particular brands or companies.

c. Digital Marketing and Data Collection

In its 60-Day Notice, the FTC stated that it would seek information from the alcohol industry about data collection efforts, including data collection in connection with digital and social media marketing, and efforts to avoid collection of data from youth under the legal drinking age of 21. The FTC received extensive and detailed recommendations regarding its proposed collection of digital marketing and data collection. These recommendations were provided by the CDD, the State AGs, CAMY, and The Marin Institute.

The CDD White Paper expressed concern that online advertising has evolved without sufficient public analysis or regulatory oversight. It outlined key concepts and practices that have been guiding the growth of interactive marketing in the alcohol industry, including the creation of a ''high-definition media and marketing ecosystem'' [12] that integrates

New York, Oklahoma, Oregon, Rhode Island, South Carolina, Tennessee, Utah, Vermont, Washington, and Wyoming.

[3] CDD, *Alcohol Marketing in the Digital Age* (May 2010) (''CDD White Paper''). A private citizen also submitted the CDD White Paper as an attachment to her comment.

[4] See further discussion about The Marin Institute comment at Section A.3.c, below.

[5] These were submitted by a private citizen in Michigan (also referenced in note 3, above) and the Mesilla Valley DWI Resource Center in New Mexico. The recommendations in these comments are discussed in notes 11 and 13, below.

[6] See discussion at Section A.3., below.

[7] See 60-Day Notice, 76 FR 10596, 10597 (Feb. 25, 2011).

[8] See 60-Day Notice, *id.* at 10597.

[9] While the FTC has not sought these data on an annual basis, it has been actively monitoring the alcohol industry. The FTC has collected expenditure data as part of its ongoing study and report process since the late 1990s. These studies have resulted in reports issued in 1999, 2003, and 2008. Since 2008, the staff has engaged in both formal and informal monitoring of alcohol self-regulatory efforts. For example, between 2009 and 2010, the Commission issued 6(b) Orders to six mid-sized alcohol companies.

[10] On May 26, 2011, the Beer Institute and the Distilled Spirits Council of the United States (''DISCUS'') each announced that they would increase their placement standard from 70% to 71.6% to reflect the recently published results of the 2010 U.S. Census data, which showed that 71.6 percent of the U.S. population is 21 years of age and older. See Beer Institute press release, ''Beer Institute Revises Advertising Standard Based on New U.S. Census Data'' (May 26, 2011), available at *http://www.beerinstitute.org/BeerInstitute/files/ccLibraryFiles/Filename/000000001167/Updated%20Ad%20Code%20with%20Census%20Data%20-%20FINAL%205-26-11.pdf;* DISCUS, ''Distilled Spirits Industry Updates Advertising Guidelines Based on Newly Released Census Data'' (May 26, 2011), available at *http://www.discus.org/media/press/article.asp?NEWS_ID=631.* To date, the Wine Institute has not announced any changes to its placement standard.

[11] This recommendation to increase the placement standard to 85% was echoed by a private commenter from Michigan.

[12] It particularly noted three aspects of the high-definition media and marketing ecosystem: (a) Engagement, i.e., the creation of a marketing environment where consumers interact with brands and integrate them into their personal and social

Continued

advertising, editorial content, audience measurement, and content delivery; the growth of distribution platforms such as social media, online video channels, and virtual worlds; and targeted marketing to the African-American and Latino communities.

The State AG comment observed that alcohol advertising has substantially increased its presence online. The comment identified one brand that advertises solely in social media and another company that employed ''extensive, world-wide use of social media'' for a recent World Cup-related advertising campaign.[13] The CAMY comment echoed the concerns cited by the State AG comment.

Accordingly, the CDD, State AG, CAMY, and The Marin Institute comments requested that the FTC seek a variety of information regarding digital marketing and data collection practices. These practices included: Marketing and data collection on both corporate-sponsored Web sites as well as Web sites operated by third parties, age-verification mechanisms on such Web sites, and marketing practices on social media sites.

The FTC's information requests will take account of the comments and changing technology and seek information about alcohol companies' digital marketing and data collection practices, including data collected about consumers on corporate-sponsored Web sites and those operated by third parties. The FTC will consider these commenters' recommendations about digital marketing and data collection in the course of developing its report.

d. Lesser-Known Media Programs

The UConn Medical School comment recommended that the FTC specifically seek expenditure data for product placements in television and film, including the type of product depicted and to whom the compensation was paid. The FTC's information requests will seek expenditure data for product placements in general, as well as the type and title of the entertainment vehicle in which such product placement appeared, and whether compensation was made in the form of monetary payment or an in-kind provision (*e.g.,* products or other logoed items).

e. Other Recommendations About Data Collection

The UConn Medical School comment offered many recommendations for the types of data the FTC should seek in its data collection. In particular, the comment suggested gathering specific data about the voluntary codes' complaint review procedures and the composition of their complaint review boards. For example, the comment recommended that the FTC seek data regarding the complaint review process, such as procedures for evaluating complaints. The comment also recommended that the FTC seek information regarding the qualifications, compensation, and conflicts of interest of complaint review board members.[14]

The Commission agrees that complaint review procedures are a critical component of self-regulation. In past studies, the compulsory process orders specifically sought information about the complaint review process from individual companies; ultimately, the information was provided voluntarily by the three alcohol trade associations. Similarly, for this study, the Commission plans to seek information about the complaint review process and related issues from the trade associations.

3. Other Comments

As noted earlier, the FTC received 64 comments in response to the 60-Day Notice that did not address the proposed data collection. These comments fall into three broad categories: (1) Comments opposing the FTC's study concept in general; (2) comments seeking stricter self-regulation; and (3) comments calling for an end to self-regulation, to be replaced by a government ban or curtailing of alcohol advertising.

a. Comments Opposing Study Concept

Three comments expressed disagreement with the general concept of studying the alcohol industry. These were submitted by: (1) One university; (2) one non-governmental organization; and (3) one anonymous commenter. Each of these commenters offered a different reason: One argued that there was no causal connection between alcohol advertising and youth drinking; another argued that the damage already had been done, so the FTC's study would come too late; and the final one argued that ''we are taxed enough'' without adding anything further other than requesting confidential treatment. As noted earlier, the FTC believes that its information requests are in the public interest and essential to the agency's performance of its regulatory duties.

b. Comments Seeking Stricter Self-Regulation

Two comments advocated for more ''teeth'' in self-regulation. First, the Cambridge Prevention Coalition and Bluegrass Prevention comments advocated for objective standards to judge the content of alcohol advertising. Second, the Bluegrass Prevention comment stated that the alcohol industry should be required to take reasonable steps to ensure that their brands are not promoted by fans and other third parties online (e.g., social media) in a way that violates the voluntary codes. The FTC will consider these recommendations in the course of developing its report.

c. Comments Calling for an End to Self-Regulation

The vast majority of comments received—60—called for an end to alcohol industry self-regulation and advocated for more active government regulation. These were submitted by: (1) Five local government agencies; (2) 24 non-governmental agencies; (3) two religious organizations; (4) one research institute; and (5) 28 individuals. The Marin Institute comment described industry self-regulation as a ''complete failure.'' Marin, along with an individual commenter, called for the existing compliance review boards to be replaced by a ''truly independent third party review board that includes public interest representatives.'' Other comments, including many submitted by individuals, called for alcohol advertising to be banned or curtailed to reduce the likelihood of youth exposure to the ads.

B. Information Requests to the Beverage Alcohol Industry

The FTC proposes to send information requests to the ultimate U.S. parent companies of up to fourteen advertisers of beer, wine, or distilled spirits (''industry members''). The requests will seek, among other

relationships; (b) data collection and behavioral targeting, such as digital advertising campaigns that encourage users to provide their personal information in order to participate in a design contest; and (c) a ''360-degree strategy'' that aims to keep consumers continuously plugged into their advertising campaigns, whether they are online or in the real world.

[13] Similarly, the Mesilla Valley DWI Resource Center comment stated that the FTC should seek information regarding the extent to which the alcohol industry is shifting its advertising to the Internet and to what extent those Web sites and social media sites are following the voluntary codes.

[14] The UConn Medical School comment also suggested that the FTC gather specific information about advertising strategy, content, and substantiation. The comment recommended that the FTC seek a variety of data, ranging from the ages of actors who appeared in alcohol advertising for television and print to substantiation for health benefits claims made about low-carbohydrate beers. The Commission believes the level of specificity in these recommendations exceeds the scope of the study.

information, data regarding: (1) Sales of beverage alcohol; (2) expenditures to advertise and promote beverage alcohol in measured and non-measured media; (3) compliance with the 70% placement standard contained in the industry's self-regulatory codes as of January 1, 2011; (4) digital marketing practices and data collection, including efforts to avoid collection of data from youth under the legal drinking age of 21; and (5) descriptions of lesser-known media programs, such as point-of-sale advertising, product placement, and social responsibility programs. A description of the proposed specifications, subject to further public comment, is located at *http://www.ftc.gov/fedreg2011/11/111121alcoholstudypra2supp.pdf*.

It should be noted that subsequent to this notice, any destruction, removal, mutilation, alteration, or falsification of documentary evidence that may be responsive to this information collection within the possession or control of a person, partnership, or corporation subject to the FTC Act may be subject to criminal prosecution. 15 U.S.C. 50; see also 18 U.S.C. 1505.

C. Estimated Annual Hours and Labor Cost Burdens

1. Estimated Hours Burden: 8,680 Hours

The staff's estimate of the hours burden is based on the time required to respond to each information request. Because beverage alcohol companies vary in size, the number of products they sell,[15] and the extent and variety of their advertising and promotion efforts, the staff has provided a range of the estimated hours burden. As noted above, each company will receive information requests pertaining to five categories of information.

Based upon its knowledge of the industry, the staff estimates, on average, that the time required to gather, organize, format, and produce responses to the proposed orders will range between 300 and 620 hours per company. The total estimated burden per company is based on the following assumptions:

(1) Identify, obtain, and organize sales information, prepare response: 30–70 hours.

(2) Identify, obtain, and organize information on advertising and marketing expenditures, prepare response: 50–130 hours.

(3) Identify, obtain, and organize placement information, prepare response: 120–280 hours.

(4) Identify, obtain, and organize information regarding digital marketing practices and data collection, prepare response: 80–100 hours.

(5) Identify, obtain, and organization information regarding lesser-known media programs: 20–40 hours.

Conservatively, the staff estimates that the burden per company for each of up to fourteen intended recipients will be 620 hours. Accordingly, the staff estimates a total burden for these companies of approximately 8,680 hours (14 companies × 620 average burden hours per company). These estimates include any time spent by separately incorporated subsidiaries and other entities affiliated with the ultimate parent company that has received the information request.

2. Estimated Cost Burden: $186,000

It is difficult to calculate with precision the labor costs associated with the information requests, as the costs entail varying compensation levels of management and/or support staff among companies of different sizes. Financial, legal, marketing, and clerical personnel may be involved in the information collection process. The staff has assumed that professional personnel and outside legal counsel will handle most of the tasks involved in gathering and producing responsive information, and has applied an average hourly wage of $300/hour for their labor. Thus, the staff estimates that the total labor costs per company will range between $90,000 ($300 × 300 hours) and $186,000 ($300 × 620 hours).

The staff estimates that the capital or other non-labor costs associated with the information requests will be minimal. Although the information requests may necessitate that industry members maintain the requested information provided to the Commission, they should already have in place the means to compile and maintain business records.

D. Request for Comment

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before December 29, 2011. Write ''Alcohol Reports: Paperwork Comment; Project No. P114503'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information such as an individual's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You also are solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential * * *, '' as provided in Section 6(f) of the FTC Act, 15 USC 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you would like the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you must follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c). Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online, or to send them to the Commission by courier or overnight service. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/alcoholstudy2011pra2,* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Alcohol Reports: Paperwork Comment; Project No. P114503'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex J), 600 Pennsylvania Avenue NW, Washington, DC 20580. If possible, submit your

[15] In 2007, the top 12 alcohol suppliers alone reported selling 1,133 brands. See 2008 FTC Alcohol Report, available at *http://www.ftc.gov/os/2008/06/080626alcoholreport.pdf.*

paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before December 29, 2011. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.shtm*.

Comments on the information collection requirements subject to review under the PRA should also be submitted to OMB. If sent by U.S. mail, address comments to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for the Federal Trade Commission, New Executive Office Building, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503. Comments sent to OMB by U.S. postal mail, however, are subject to delays due to heightened security precautions. Thus, comments instead should be sent by facsimile to (202) 395–5167.

David C. Shonka,

Acting General Counsel.

[FR Doc. 2011–30434 Filed 11–28–11; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting. This meeting is open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meeting and/or participate in the public comment session should email *acmh@osophs.dhhs.gov*.

DATES: The meeting will be held on Tuesday, January 24, 2012, from 9 a.m. to 5 p.m. and Wednesday, January 25, 2012, from 9 a.m. to 1 p.m.

ADDRESSES: The meeting will be held at the Doubletree Hotel, 1515 Rhode Island Avenue NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Monica A. Baltimore, Executive Director, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. *Phone:* (240) 453–2882 *Fax:* (240) 453–2883.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health in improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the Office of Minority Health.

Topics to be discussed during this meeting will include strategies to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help eliminate health disparities, as well as other related issues.

Public attendance at the meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person prior to close of business December 22, 2011. Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to three minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health prior to close of business January 9, 2012. Any members of the public who wish to have printed material distributed to ACMH members should submit their materials to the Executive Director, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852, prior to close of business January 13, 2012.

Dated: November 16, 2011.

Monica A. Baltimore,

Executive Director, Advisory Committee on Minority Health, Office of Minority Health, Office of the Assistant Secretary for Health, Office of the Secretary, U.S. Department of Health and Human Services.

[FR Doc. 2011–30682 Filed 11–28–11; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Announcement of Requirements and Registration for the United States Surgeon General's Healthy Apps Challenge

AGENCY: Office of the Surgeon General, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The U.S. Surgeon General's Healthy Apps Challenge will encourage the development and submission of technology applications that will complement and enhance two key aspects of the Surgeon General's prevention agenda: T*he Surgeon General's Vision for a Healthy and Fit Nation* (*http://www.surgeongeneral.gov/library/obesityvision/obesityvision2010.pdf*) and the nation's first *National Prevention Strategy* (*http://www.healthcare.gov/prevention/nphpphc/strategy/report.pdf*). Specifically, the challenge will highlight the ability of innovative new technologies to: (1) Provide health information tailored to the needs of the user; and (2) empower users (the general public) to regularly engage in and enjoy health promoting behaviors related to fitness and physical activity, nutrition and healthy eating, and/or physical, mental and emotional well-being. This challenge is being conducted in collaboration with the Office of the National Coordinator for Health IT.

DATES: *Submission period begins:* 12:01 a.m., EST, December 2, 2011.

Submission period for initial entries ends: 11:59 p.m., EST, December 30, 2011.

Judging process for finalists begins: 12:01 a.m., EST, January 2, 2012.

Judging process for finalists ends: 11:59 p.m., EST, January 20, 2012.

Finalist(s) notified: January 23, 2012.

Public announcement: Late January, 2012.

FOR FURTHER INFORMATION CONTACT: Dr. Lesley Russell, Senior Public Health Advisor for Outreach and Policy, Office of the Surgeon General, U.S. Department of Health and Human Services. *Phone:* (202) 401–8596.

SUPPLEMENTARY INFORMATION:

Subject of Challenge Competition

Entrants are asked to develop software applications (apps) in the following categories:

Fitness/physical activity: This category is focused on applications particularly aimed at recruiting and

retaining those people who are not currently regularly exercising.

Nutrition/healthy eating: This category is focused on applications aimed at quickly prepared home meals, eating out sensibly, and getting healthy food when travelling (e.g. in airports) or out and about.

Integrative health: This category is focused on applications aimed at integrating multiple aspects of wellness (healthy sleep habits, boosting mental/spiritual health, lifestyle behavior change, social health, family health, community health, *etc.*).

Submissions can be existing applications or applications developed specifically for this challenge. A free version of the application must be available for consumer use. The applications should not require the purchase of additional products to be fully operational.

Eligibility Rules for Participating in the Competition

This Challenge is open to U.S. residents of the 50 States (plus the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa) who are 13 years and over (with a parent/guardian if under 18 years of age), and businesses and organizations domiciled in the U.S.

Individuals submitting on behalf of corporations, nonprofits, or groups of individuals (such as academic classes or other teams) must meet the eligibility requirements for individual contestants; each individual team member need not meet every criterion, but the lead member of a team must meet all criterion. An individual may join more than one team, corporation, or nonprofit organization.

Eligibility to be a contestant is contingent upon fulfilling all requirements set forth herein. Contestants may be required to disclose their employers to allow the Department of Health and Human Services (HHS) to conduct debarment and compliance screenings. HHS will not select as a finalist or challenge winner a company, or an individual who works for a company, which is currently on the Federal list of debarred entities or that has significant compliance issues.

A federal entity or federal employee acting within the scope of his or her employment is not eligible to participate. Federal employees acting outside the scope of their employment should consult their ethics official before participating in the Challenge.

Participation constitutes contestant's full and unconditional agreement to these official rules.

Prizes

This competition does not provide monetary prizes. The winners in each of the three categories will be recognized by HHS and the Office of the Surgeon General during an announcement/award ceremony in January/February 2012. Finalist applications will be featured on an HHS Web site.

Basis Upon Which Winner Will Be Selected

Entries will be judged by an expert panel selected by HHS. The judging panel will make selections based upon the following criteria:

(1) *Usefulness:* Each entry will be rated for its ability to empower users to engage in health promoting behaviors related to fitness and physical activity; nutrition/healthy eating; or physical and mental well-being. The apps must provide health information tailored to the needs of the user.

(2) *Innovativeness:* Each entry will be rated for the degree of new thinking and creativity it brings to applications focusing on the health promotion, disease prevention, and wellness in the three categories outlined.

(3) *Evidenced-Based or Data-Driven Approach:* Each entry will be rated on the degree to which it incorporates scientific evidence or empirical data to help assess and modify health behaviors and wellness outcomes. The entry must include a description of how research and science is incorporated into the evidence base underpinning the application.

(4) *Usability:* Each entry will be rated on its user-friendliness and interactive capabilities. Entries should be applicable and attractive to people who are not early adopters of new technologies and are not ''high tech''. Additional consideration will be given as to whether the entry can be used by people with disabilities.

(5) *Potential Impact:* Each entry will be rated on the strength of its potential to help all Americans, particularly those who do not normally engage regularly in health promoting behavior, to improve their health and fitness. The ability to appeal to those in underserved and hard-to-reach communities and in Cultural and Linguistically Diverse (CALD) communities will also be assessed.

(6) *Data Downloads:* Submission will receive bonus points if they offer the ability to download personal data and allow the user to integrate these data into other health and health care applications, including Personal Health Records/e-Health Records. Submissions must specify the type of information available (*e.g.,* running log, vegetable intake, sleep records) and the unit of measurement (*e.g.,* distance or minutes per day, calories burned, calories consumed, hours of sound sleep).

(7) *Fun Factor and Health ''Lagniagge'':* Each entry will be rated for the ''fun factor'' it brings to users who are engaged in health promoting behaviors and on whether it provides ''lagniagge'' (something extra or a bonus) in health for the user to enhance their personal health, fitness, and/or wellness goals.

Each entry must be limited to software programs that do not require additional hardware or the purchase of additional products (beyond a smart phone or a computer) for full use.

The application should be available at no cost or fees to the consumer.

Additional Information

Non-communicable diseases such as cardiovascular disease, cancer, and chronic respiratory disease account for a large majority of deaths in the U.S. The links between unhealthy behaviors (*e.g.,* physical inactivity, unhealthy eating, tobacco use, excessive alcohol use) and these chronic illnesses have been well established. The *Surgeon General's Vision for a Healthy and Fit Nation* and the *National Prevention Strategy* both highlight the importance of health behaviors in preventing disease and creating a healthy and fit nation. The *National Prevention Strategy* further envisions a prevention-oriented society where all sectors recognize the value of health for individuals, families, and society and work together to achieve better health for all Americans. The *National Prevention Strategy* also emphasizes the importance of empowering individuals with tools and information to make healthy choices, and shifting the focus of the nation's health to prevention and integrated wellness (*i.e.,* physical, behavioral, social, and emotional health), rather than focusing primarily on illness and disease.

National public health recommendations and guidelines currently exist for physical activity (Physical Activity Guidelines for Americans; *http://www.health.gov/paguidelines/*), nutrition (MyPlate; *http://www.choosemyplate.gov/*), and overall health and wellness (Healthy People 2020; *http://www.healthypeople.gov/2020/default.aspx*). Yet, currently, approximately 40 percent of American adults report that they do not engage in any leisure-time physical activity, with less than half the population meeting public health recommendations for

physical activity. In 2009 fewer than 1 in 10 Americans included the recommended amounts of fruit and vegetables in their diet. Over one-third of Americans are currently obese. Research also finds that sleep health contributes to obesity and disease, but 40 percent of Americans report unintentionally falling asleep during the day at least once in the preceding month.

Communication technology has great potential to empower and connect individuals, particularly those in underserved and hard-to-reach communities, with information to make healthy choices. The Office of the Surgeon General is launching this developer's challenge to encourage the development (by innovators) and use (by everyday Americans) of consumer-facing technology to create a healthy and fit nation.

In order for an entry to win this Challenge, it must meet the following requirements:

General: Contestants must provide access to the application, a detailed description of the application, instructions on how to install and operate the application, and system requirements necessary to run the application (collectively, submission). Applications developed for mobile phones must specify the specific operating system(s) on which the app runs and provide a site where the app can be downloaded.

Acceptable platforms: The application must be designed for the Web, a personal computer, a mobile device (*e.g.,* mobile phone, portable sensor, *etc.*), console, or any platform broadly accessible on the open Internet.

Accessibility: The application must, to the extent practicable, be accessible to a wide range of users, including users with disabilities. Application should also aim to eventually meet objectives for federal compliance guidelines for information technology as addressed by Section 508 of the Rehabilitation Act of 1973: *http://www.section508/gov*.

Deadlines: The submission must be available for evaluation by 11:59 p.m., EST, on December 30, 2011 for judging purposes.

Modifications: Once a submission is made, the contestant cannot make any changes or alterations to any part of the submission.

Intellectual Property: The submission must not infringe on any copyright or any other rights of any third party.

No HHS Logo: The application must not use HHS's logo or official seal or the logo or official seal of the Surgeon General in the submission, and must not claim federal government endorsement.

Functionality/Accuracy: A submission may be disqualified if the software application fails to function as expressed in the description provided by the contestant, or if the submission provides inaccurate information.

Security: Submissions must be free of malware. Contestant agrees that HHS may conduct testing on the application to determine whether malware or other security threats may be present. HHS may disqualify the application if, in HHS's judgment, the application may damage government or third-party equipment or operating environments.

HHS will also screen submissions for eligibility of the submitting contestant and compliance with Challenge.gov's *Standards of Conduct.* By submitting the entries, applicants consent to IT security testing and debarment and compliance screening.

Submissions satisfying these criteria will be deemed eligible and posted on the Challenge.gov Web site on a rolling basis. Submissions from contestants who are under the age of eighteen (18) will be deemed ineligible and will not be posted, until and unless a completed Parent/Legal Guardian Consent Form is received.

Copyright/Intellectual Property/ Original Work: Each contestant warrants that he or she is the sole author and owner of the submission, that the submission is wholly original with the contestant (or is an improved version of an existing application that the contestant has sufficient rights to use including the substantial improvement of existing open-source apps), and that it does not infringe any copyright or any other rights of any third party of which contestant is aware. Each contestant also warrants that the application is free of malware.

Submission Rights: Each contestant grants to HHS an irrevocable, paid-up, royalty-free non-exclusive worldwide license to post, link to, and display publicly the application on the Web, for the purpose of the Challenge, during the duration of the Challenge and for a period of one year following announcement of the winner. All contestants will retain all other intellectual property rights over their submissions.

Verification of Finalists and Challenge Winner: Finalists and the Challenge winner must continue to comply with all terms and conditions of these official rules, and winning is contingent upon fulfilling all requirements contained herein. The finalists will be notified by email, telephone, or mail after the date of the judging. The finalists (or finalist's parent/guardian if under 18 years of age) and Challenge winner (or Challenge winner's parent/guardian if under 18 years of age), will be required to sign and return to HHS, within ten (10) days of the date notice being sent, an Affidavit of Eligibility and Liability/ Publicity Release (except where prohibited) in order to claim any recognition. In the event that a potential finalist or Challenge winner is disqualified for any reason, HHS may award the applicable recognition to an alternate winner who had the highest score remaining of the eligible entries.

Privacy: If you choose to provide the HHS with personal information by registering or filling out the submission form through the Web site, that information will be used to respond to you in matters regarding your submission and/or the Challenge only—unless you choose to receive updates or notifications about other competitions from HHS on an opt-in basis. Information is not collected for commercial marketing.

Liability: The contestant shall be liable for, and shall indemnify and hold harmless the Government against, all actions or claims for loss of or damage to property (including any damage that may result from a virus or malware to HHS computer systems or those of the end-users of the software and/or applications), resulting from the fault, negligence, or wrongful act or omission of the contestant.

Disclaimer: HHS and its contractors are not responsible for: (1) Any incorrect or inaccurate information, whether caused by contestants, printing errors, or by any of the equipment or programming associated with or utilized in the Challenge; (2) technical failures of any kind, including, but not limited to malfunctions, interruptions, or disconnections in phone lines or network hardware or software; (3) unauthorized human intervention in any part of the entry process or the Challenge; (4) technical or human error which may occur in the administration of the Challenge or the processing of entries; or (5) any injury or damage to persons or property which may be caused, directly or indirectly, in whole or in part, from contestant's participation in the Challenge or receipt, use or misuse of any recognition. If for any reason a contestant's entry is confirmed to have been erroneously deleted, lost, or otherwise destroyed or corrupted, contestant's sole remedy is another entry in the Challenge. Recognition in connection with this Challenge does not constitute an endorsement of a specific product by the HHS.

General Conditions: HHS reserves the right to cancel, suspend, and/or modify the competition, or any part of it, for any reason, at HHS's sole discretion.

All decisions by HHS are final and binding in all matters related to the competition.

Dated: November 16, 2011.

Regina Benjamin,

Surgeon General, U.S. Public Health Service.

[FR Doc. 2011–30668 Filed 11–28–11; 8:45 am]

BILLING CODE 4150–28–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Healthy Worksite Program; Information Webinar Series

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of meeting.

SUMMARY: The Centers for Disease Control and Prevention (CDC) located within the Department of Health and Human Services (HHS) announces a series of Webinars to provide information for individuals and groups interested in learning more about the National Healthy Worksite Program. The National Healthy Worksite Program is an HHS/CDC initiative to establish and evaluate comprehensive workplace health programs to improve the health of workers and their families. Registration for the Webinars is free.

DATES: Webinars will be held on the following dates and times: December 20, 2011, 2:00–3 p.m. EST; January 13, 2012, 12:00–1 p.m. EST; January 20, 2012 12:00–1 p.m. EST; January 20, 2012 3:00–4 p.m. EST. Registration information is provided in **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Inquiries and requests for information should be sent to *NationalHealthyWork@cdc.gov.* Additional information, announcements, and frequently asked questions will be posted at *http://www.cdc.gov/NationalHealthyWorksite.* Calls should be directed to Jason Lang, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention, at (770) 488–5269.

SUPPLEMENTARY INFORMATION:

Background

The National Healthy Worksite Program is an HHS/CDC initiative to establish and evaluate comprehensive workplace health programs to improve the health of workers and their families. HHS/CDC plans to recruit groups of up to 15 employers within seven locations across the U.S. and lead them through the process of building a workplace health program including the following components: Assessment of employer and employee needs, interests, health risks, and existing capacity; a planning process resulting in a workplace health improvement plan to guide the worksite through program development; implementation of programs, policies, and practices to address employee lifestyle risk factors related to physical activity, nutrition, and tobacco use; building a program infrastructure within each worksite for long-term sustainability including evaluation, wellness committees, program champions, and leadership (CEO/senior executive) support; and participation in programmatic activities, training, and technical assistance. The National Healthy Worksite Program will include science-based initiatives to build worksite capacity and improve workplace culture to support healthy behaviors. Examples of such strategies include health and lifestyle education and coaching, establishing tobacco-free campus policies, promoting work schedules that allow employees to be more physically active, and offering more healthy food choices in worksite cafeterias and vending machines. A core principle of the initiative is to maximize employee engagement in the design and implementation of the programs so they have the greatest chances of success. The program will not issue grants or financial assistance directly to employers.

Based on employee needs, companies will establish a core set of 3 to 5 science-based interventions from an available menu of options that include a mix of strategies that target physical activity, nutrition, and tobacco use in the employee population. Examples include:

1. Tobacco-free campus policy, subsidized quit-smoking counseling.
2. Worksite farmer's market, nutrition counseling/education, menu labeling on healthy foods, healthy foods in cafeterias and vending, weight management counseling.
3. Stairwell enhancement, physical fitness/lifestyle counseling, walking trails/clubs, flextime policy.

For the National Healthy Worksite Program, the United States has been divided into seven regions. Regions are defined as follows:

- Region 1: Connecticut, Delaware, District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, Virginia, and West Virginia;
- Region 2: Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, and Tennessee;
- Region 3: Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin;
- Region 4: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas;
- Region 5: Colorado, Iowa, Kansas, Missouri, Montana, Nebraska, North Dakota, South Dakota, Utah, and Wyoming;
- Region 6: Arizona, California, Hawaii, and Nevada; and
- Region 7: Alaska, Idaho, Oregon, and Washington.

Each of the seven regions will have one group of up to 15 employers that are located within a small, defined geographic area (*i.e.,* city, county) with high prevalence of chronic disease and sufficient community resources available to maintain a sustainable workplace health program when the National Healthy Worksite Program ends. Each of the seven groups of employers will consist of a mix of employers (small—100 or less full-time employees; medium—101–250 employees; and large—251–1000 employees). Outreach to interested employers in the seven locations will occur shortly after these Webinars. Interested employers will be directed to a program Web site (*http://www.cdc.gov/NationalHealthyWorksite*) and/or program email address (*NationalHealthyWork@cdc.gov*) to be certified as an eligible employer. The certification process will open January 20, 2012 and close February 3, 2012.

In addition, multiple methods will be used to develop a marketing campaign to reach employers including advertising in trade publications, direct mail/email, utilizing the Web site, producing a recruitment video and using social media. All participants must complete their submission through the program Web site or program mailbox during the open certification period. Other submissions will not be considered. Final selection of participating employers will be made on or about April 30, 2012.

Registration: Early registration for each Webinar is encouraged, as space is limited to 1,000 participants. Participants should register online by using the links provided below.

- December 20, 2011 2 p.m.–3 p.m. EST. Webinar registration site: *https://www3.gotomeeting.com/register/703198246;*

• January 13, 2012 12 p.m.–1 p.m. EST. Webinar registration site: *https://www3.gotomeeting.com/register/807742630;*

• January 20, 2012, 12 p.m.–1 p.m. EST. Webinar registration site: *https://www3.gotomeeting.com/register/133770238;* and

• January 20, 2012, 3 p.m.–4 p.m. EST. Webinar registration site: *https://www3.gotomeeting.com/register/367222398.*

Purpose of Each Webinar

The December 20, 2011 Webinar will provide a general overview of the National Healthy Worksite Program including program goals and objectives, program components and employer activities, timelines, and anticipated program outcomes.

The January 2012 Webinars will (1) Provide a general overview of the National Healthy Worksite Program; (2) review the process and criteria HHS/CDC used to identify the seven locations where the program will take place; (3) announce those locations; and (4) discuss the employer certification process and criteria HHS/CDC will use to identify and select up to 100 employers participating in the National Healthy Worksite Program.

HHS/CDC plans to publish notices in the **Federal Register** announcing (1) The seven locations where the program will take place and the criteria used for selection; and (2) the employer certification process and criteria HHS/CDC will use to identify and select up to 100 participating employers across the seven selected locations.

Special Accommodations

HHS/CDC will make every effort to accommodate persons with disabilities or special needs. HHS/CDC will make slides and an audio and written transcript of the Webinars available on its Web site, *http://www.cdc.gov/NationalHealthyWorksite*. If you require additional special accommodations due to a disability, please contact Jason Lang, National Center for Chronic Disease Prevention and Health Promotion, at (770) 488–5269 at least 7 days in advance of the meeting.

Dated: November 21, 2011.

James W. Stephens,

Director, Office of Science Quality, Office of the Associate Director for Science, Center for Disease Control and Prevention.

[FR Doc. 2011–30649 Filed 11–28–11; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–29 and CMS–209]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Request for Certification as a Rural Health Clinic Form and Supporting Regulations in 42 CFR 491.1–491.11; *Use:* The Form CMS–29, Request for Certification as a Supplier of Rural Health Clinic (RHC) Services under the Medicare/Medicaid Program, is utilized as an application to be completed by suppliers of RHC services requesting participation in the Medicare program. This form initiates the process of obtaining a decision as to whether the conditions for certification are met as a supplier of RHC services. It also promotes data reduction or introduction to and retrieval from the Automated Survey Process Environment (ASPEN) and related survey and certification databases by the CMS Regional Offices. Should any question arise regarding the structure of the organization, this information is readily available. With this renewal request, the title of the Form CMS–29 is being revised to better describe the purpose of the data being collected. Both new and existing clinics must provide and attest to the accuracy of specific clinic data as a part of the RHC certification process. Therefore, the revised title is ''Form CMS–29/Verification of Clinic Data—Rural Health Clinic Program.'' The Form CMS–29 is also being revised to remove Section V, Federal Support. The information captured under Section V is not a deciding factor as to whether or not a clinic meets RHC certification requirements. Therefore, it is unnecessary to require facilities to complete this section as a part of the certification process; *Form Number:* CMS–29 (OCN 0938–0074); *Frequency:* Occasionally (initially and then every six years); *Affected Public:* Private Sector (Business or other for-profit and Not-for-profit institutions); *Number of Respondents:* 3,981; *Total Annual Responses:* 830; *Total Annual Hours:* 138. (For policy questions regarding this collection contact Shonté Carter at (410) 786–3532. For all other issues call (410) 786–1326.)

2. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Laboratory Personnel Report (CLIA) and Supporting Regulations in 42 CFR 493.1357, 493.1363, 493.1405, 493.1406, 493.1411, 493.1417, 493.1423, 493.1443, 493.1449, 493.1455, 493.1461, 493.1462, 493.1469, 493.1483, 493.1489 and 493.1491; *Use:* The information collected on this survey form is used in the administrative pursuit of the Congressionally mandated program with regard to regulation of laboratories participating in CLIA. The surveyor will provide the laboratory with the CMS–209 form. While the surveyor performs other aspects of the survey, the laboratory will complete the CMS–209 by recording the personnel data needed to support their compliance with the personnel requirements of CLIA. The surveyor will then use this information in choosing a sample of personnel to verify compliance with the personnel requirements. Information on personnel qualifications of all technical personnel is needed to ensure the sample is representative of the entire laboratory; *Form Number:* CMS–209 (OCN 0938–0151); *Frequency:* Biennially; *Affected Public:* Private Sector; State, Local, or Tribal Governments; and Federal Government; *Number of Respondents:* 20,486; *Total Annual Responses:* 10,243; *Total Annual Hours:* 5,121.50. (For policy questions regarding this collection contact Kathleen Todd at (410) 786–3385. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or

Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by January 30, 2012:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: November 21, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–30729 Filed 11–28–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10411, CMS–10114 and CMS–10390]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* State Balancing Incentive Payments Program (BIPP); *Use:* The Balancing Incentive Program requires that States undertake three structural changes to their long-term services and supports (LTSS) systems to increase nursing home diversions and access to community-based care: implementation of a No Wrong Door/Single Entry Point System, conflict-free case management, and the use of a core standardized assessment for supporting eligibility determination and service planning. In addition, grantee States must increase their community-based LTSS expenditures relative to their overall expenditures on LTSS to a minimum of 25% or 50%. State Medicaid agencies are responsible for developing the submissions to CMS in order to participate in this opportunity. If the statutory requirements are met, CMS will approve the State's submission, giving the State the authority to implement the changes in the program and to draw down the increased FMAP funds. *Form Number:* CMS–10411 (OCN 0938–1145); *Frequency:* Once; *Affected Public:* State, Local, or Tribal Government; *Number of Respondents:* 56; *Total Annual Responses:* 56; *Total Annual Hours:* 2,240. (For policy questions regarding this collection contact Effie George at (410) 786–8639. For all other issues call (410) 786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* National Provider Identifier (NPI) Application and Update Form and Supporting Regulations in 45 CFR 142.408, 45 CFR 162.406, 45 CFR 162.408; *Use:* The National Provider Identifier (NPI) Application and Update Form is used by health care providers to apply for NPIs and furnish updates to the information they supplied on their initial applications. The form is also used to deactivate their NPIs if necessary. The NPI Application/Update form has been revised to provide additional guidance on how to accurately complete the form. This collection includes clarification on information that is required on initial applications. Minor changes include adding a 'delete' check box for removal of information. This collection also includes revisions to the instructions. In addition, we have adjusted the burden downward from the estimate provided in the 60-day **Federal Register** notice to correct an arithmetic error. *Form Number:* CMS–10114 (OCN: 0938–0931); *Frequency:* Reporting—On occasion; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and Federal government; *Number of Respondents:* 481,440; *Total Annual Responses:* 481,440; *Total Annual Hours:* 89,080. (For policy questions regarding this collection contact Leslie Jones at (410) 786–6599. For all other issues call (410) 786–1326.)

3. *Type of Information Collection Request:* New collection; *Title of Information* Collection: Hospice Voluntary Quality Data Reporting Program; *Use:* Section 1814(i)(5) of the Social Security Act (Act) added by section 3004 of Patient Protection and Affordable Care Act, Public Law 111–148, enacted on March 23, 2010 (Affordable Care Act), authorizes the Secretary to establish a quality reporting program for hospices. Section 1814(i)(5)(A)(i) of the Act requires that the Secretary, beginning with FY 2014, reduce the market basket update by 2 percentage points for any hospice that does not comply with the quality data submission requirements with respect to that fiscal year.

To meet the quality reporting requirements for hospices, as set forth in the proposed Hospice Wage Index for Fiscal Year 2012 rule, we propose that there shall be a voluntary hospice quality reporting cycle which will consist of data collection cycle beginning on October 1, 2011 and continuing through December 31, 2011. This data shall be reported to CMS by no later than January 31, 2012. There shall be a mandatory hospice quality reporting cycle which will consist of data collected from October 1, 2012 through December 31, 2012. This data shall be reported to CMS by no later than April 1, 2013. Thereafter, it is proposed that all subsequent hospice quality reporting cycles will be based on the calendar-year basis (that is, January 1, 2013 through December 31, 2013 for determination of the Hospice market basket increase factor for each Hospice in FY 2015, *etc.*).

We are requesting an initial approval of a data collection instrument entitled ''Quality Data Submission Form'' that hospice providers will use to submit quality measures data to CMS during the proposed voluntary reporting period of 10/01/2011 through 12/31/2011. This form shall be used by hospices to report

quality data pertaining to one structural measure, which is entitled: Participation in a Quality Assessment and Performance Improvement (QAPI) Program that Includes at Least Three Quality Indicators Related to Patient Care.

Since the publication of the 60-day **Federal Register** notice, there have been some revision made to the Supporting Statement A and B of this PRA package. These revisions have been made in order to: (1) Correct several very minor errors; (2) make the content of the document more descriptive; and (3) to add additional information about the program that has become available since publication of the 60-day notice. The operational details of the program have progressed and been finalized. Therefore, these changes will reflect information pertaining to operational details of the program that was not available at the time that the PRA package documents were published. There have been no changes to the Information Collection Request that is the subject of this PRA package. There has been no change in the estimated burden that will be required of providers. *Form Number:* CMS–10390 (OCN: 0938–New); *Frequency:* Occasionally; *Affected Public:* Private Sector: Business or other for-profit and not-for-profit institutions; *Number of Respondents:* 3,531; *Total Annual Responses:* 3,531; *Total Annual Hours:* 883. (For policy questions regarding this collection contact Robin Dowell at (410) 786–0060. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *December 29, 2011.*

OMB, Office of Information and Regulatory Affairs,

Attention: CMS Desk Officer.

Fax Number: (202) 395–6974.

Email: OIRA_submission@omb.eop.gov.

Dated: November 21, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–30732 Filed 11–28–11; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Officer at (301) 443–1129.

Comments are invited on: (a) The proposed collection of information for the proper performance of the functions of the Agency; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Organ Procurement and Transplantation Network and Scientific Registry of Transplant Recipients Data System (OMB No. 0915–0157)—[Revision]

Section 372 of the Public Health Service (PHS) Act requires that the Secretary, by contract, provide for the establishment and operation of an Organ Procurement and Transplantation Network (OPTN). The OPTN, among other responsibilities, operates and maintains a national waiting list of individuals requiring organ transplants, maintains a computerized system for matching donor organs with transplant candidates on the waiting list, and operates a 24-hour system to facilitate matching organs with individuals included in the list.

Data for the OPTN data system are collected from transplant hospitals, organ procurement organizations, and tissue-typing laboratories. The information is used to indicate the disease severity of transplant candidates, to monitor compliance of member organizations with OPTN rules and requirements, and to report periodically on the clinical and scientific status of organ donation and transplantation in this country. Data are used to develop transplant, donation and allocation policies, to determine if institutional members are complying with policy, to determine member specific performance, to ensure patient safety and to fulfill the requirements of the OPTN Final Rule. The practical utility of the data collection is further enhanced by requirements that the OPTN data must be made available, consistent with applicable laws, for use by OPTN members, the Scientific Registry of Transplant Recipients, the Department of Health and Human Services, and others for evaluation, research, patient information, and other important purposes.

The OPTN is recommending addition of a new Liver Explant Pathology form to the OPTN data system. This new form was developed by the OPTN Liver and Intestinal Organ Transplantation Committee and will be used to collect pathology data on liver transplant recipients who received waitlist exception points as a result of a diagnosis of hepatocellular carcinoma. Existing OPTN policy requires submission of post-transplant pathology reports by fax transmission, and the proposed form will provide standardized collection of this already-required information.

There are also minor revisions to the existing data collection forms; the added fields were inadvertently left off of the forms at the time of the initial submission. Several of these fields are ''read only'' and are included on the forms for information purposes only. One field is proposed to be removed as it represented duplicative information.

The annual estimate of burden is as follows:

Form	Number of respondents	Responses per respondents	Total responses	Hours per response	Total burden hours
Deceased Donor Registration	58	228	13,224	0.7500	9918.00
Death Referral Data	58	12	696	10.0000	6,960.00
Death Notification Referral—Eligible	58	145	8410	0.5000	4205.00
Death Notification Referral—Imminent	58	124	7192	0.5000	3596.00
Living Donor Registration	311	23	7153	0.6500	4649.45
Living Donor Follow-up	311	78	24,258	0.5000	12,129.00
Donor Histocompatibility	158	94	14,852	0.1000	1,485.20
Recipient Histocompatibility	158	171	27,018	0.2000	5,403.60
Heart Candidate Registration	131	27	3,537	0.5000	1,768.50
Lung Candidate Registration	66	41	2706	0.5000	1353.00
Heart/Lung Candidate Registration	50	1	50	0.5000	25.00
Thoracic Registration	131	34	4454	0.7500	3340.50
Thoracic Follow-up	131	277	36,287	0.6500	23,586.55
Kidney Candidate Registration	239	154	36,806	0.5000	18,403.00
Kidney Registration	239	72	17,208	0.7500	12,906.00
Kidney Follow-up *	239	693	165,627	0.5500	91,094.85
Liver Candidate Registration	132	98	12,936	0.5000	6,468.00
Liver Registration	132	48	6,336	0.6500	4,118.4
Liver Explant Pathology	132	11	1,452	0.3400	493.68
Liver Follow-up	132	459	60,588	0.5000	30,294.00
Kidney/Pancreas Candidate Registration	144	11	1,584	0.5000	792.00
Kidney/Pancreas Registration	144	6	864	0.9000	777.60
Kidney/Pancreas Follow-up	144	75	10,800	0.8500	9180.00
Pancreas Candidate Registration	144	4	576	0.5000	288.00
Pancreas Islet Candidate Registration	23	5	115	0.5000	57.50
Pancreas Registration	144	2	288	0.7500	216.00
Pancreas Follow-up	144	23	3312	0.6500	2152.80
Intestine Candidate Registration	43	5	215	0.5000	107.50
Intestine Registration	43	3	129	0.9000	116.10
Intestine Follow-up	43	25	1075	0.8500	913.75
Post Transplant Malignancy	689	11	7579	0.2000	1515.80
Total	905		478,270		258,314.83

*Includes an estimated 2,430 kidney transplant patients transplanted prior to the initiation of the data system.

Email comments to *paperwork@hrsa.gov* or mail to the HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: November 23, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–30779 Filed 11–28–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: National Health Service Corps Site Survey (OMB No. 0915–0232)—[Revision]

The Health Resources and Services Administration (HRSA), Bureau of Clinician Recruitment and Service (BCRS) places National Health Service Corps (NHSC) health care professionals at sites that provide services to underserved and vulnerable populations. The NHSC Site Survey renames and revises the previously known NHSC Uniform Data System (UDS) Report. The survey is completed annually by sites that receive an NHSC provider and are not currently receiving HRSA grant support. The NHSC Site Survey provides information that is utilized for monitoring and evaluating program operations and effectiveness, in addition to accurately reporting the scope of activities.

The annual estimate of burden is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
NHSC Site Survey	1200	1	1200	27	32,400

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: November 22, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–30628 Filed 11–28–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget (OMB), in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, email *paperwork@hrsa.gov* or call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: HIV Clinician Workforce Study (OMB No. 0915–xxxx)—[New]

HRSA's HIV/AIDS Bureau (HAB) is planning to conduct a 24-month HIV clinician workforce study to provide HRSA and other state and Federal agencies with national and state-level estimates of the number of primary care clinicians currently providing medical care to people living with HIV or AIDS in the United States, as well as projections of the magnitude of the expected shortage or surplus of HIV-related primary care clinicians through 2015. The study will focus on the supply and demand of health professionals who independently manage patients with HIV/AIDS. The study will have two main components:

a. Design and implementation of a forecasting model to estimate and project the supply of and demand for HIV clinicians at the national and regional levels; and

b. Implementation of two surveys to collect the information needed to develop HIV-specific input parameters for the forecasting model, as well as to help address other research questions of the study.

HRSA is requesting OMB approval to conduct a HIV clinician survey and a HIV practice survey. The HIV clinician survey will focus on the individual provider of care and will include questions related to:

a. The clinician's age, gender, medical profession, and medical specialty;

b. The number of hours spent in direct patient care;

c. The size and characteristics of HIV patient load;

d. The primary practice characteristics and patient management strategies; and

e. The plans to increase or decrease number of hours spent in direct patient care, as well as plans for retirement.

The HIV practice survey will also focus on the practice site and will include questions related to type and size of clinic, clinic specialty and affiliation, number and acuity of patients, number and composition of staff, type of staffing model and patient management strategies, meaningful use of electronic medical record systems, as well as appointment scheduling practices and policies. HRSA plans to administer the clinician survey using both web and paper modes, with computer-assisted telephone interview follow-ups. HRSA plans to administer the practice survey using paper mode, with computer-assisted telephone interview follow-ups.

HRSA will use claims data, supplemented with a list of members of HIV medical societies, and attendees at the 2010 HIV Clinical Conference, to identify the frame of clinicians (physicians, nurse practitioners, and physician assistants) in all 50 states and the District of Columbia who provide a significant amount of medical care to patients with HIV or AIDS. By using a national probability sampling strategy, the results of the clinician survey can be used to generate national and regional estimates of HIV clinician supply.

HRSA will use quantitative and qualitative methods to document and quantify the extent of the HIV clinician workforce surplus or shortage; predict the future requirements for and supply of HIV clinicians; and, identify best practice models and strategies for expanding the capacity of HIV practices and providers to meet the growing demand for care.

The ultimate goal of the study will be to develop proposed action steps that HRSA and other Federal and state agencies can use to enhance the capacity of the HIV clinician workforce to achieve the targets set forth in the 2010 White House Office of HIV/AIDS Policy's National HIV/AIDS Strategy and Implementation Plan.

The annual estimate of burden of the two surveys is as follows:

Instrument	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
HIV Clinician Survey	3,500	1	3,500	0.33	1,155
HIV Practice Survey	350	1	350	0.50	175
Total	3,850	.....	3,850	.....	1,330

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to the desk officer for HRSA, either by email to *OIRA_submission@omb.eop.gov* or by fax to (202) 395–6974. Please direct all correspondence to the ''attention of the desk officer for HRSA.''

Dated: November 22, 2011.

Reva Harris,

Acting Director, Division of Policy and Information Coordination.

[FR Doc. 2011–30627 Filed 11–28–11; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, HPV Vaccine Trial.

Date: December 8, 2011.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Ellen K Schwartz, EDD, MBA, Scientific Review Officer, Special Review & Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8055B, Bethesda, MD 20892–8329, (301) 594–1215, *schwarel@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to scheduling conflicts. Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: November 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–30765 Filed 11–28–11; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Epilepsy EUREKA Application Review.

Date: December 6–7, 2011.

Time: 1 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Harborplace Hotel, 202 East Pratt Street, Baltimore, MD 21202.

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892, (301) 496–0660, *Benzingw@mail.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: November 22, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–30771 Filed 11–28–11; 8:45 a.m.]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5484–N–31–02]

Notice of Withdrawal of Proposed Information Collection: Local Appeals to Single-Family Mortgage Limits

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: On September 20, 2011, HUD published a notice of proposed information collection that HUD contemplated submitting to the Office of Management and Budget (OMB) for review on the subject of local appeals to Single-Family Mortgage Limits. This notice announces the withdrawal of that proposed information collection.

FOR FURTHER INFORMATION CONTACT: Program Contact, Arlene Nunes, Director, Home Mortgage Insurance Division, Office of Single Family Program Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–2121 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: On September 20, 2011, at 76 FR 58291, HUD published notice of a proposed information collection that HUD contemplated submitting to OMB for review, as required by the Paperwork Reduction Act, on the subject of local appeals to Single-Family Mortgage Limits. The September 20, 2011, notice was issued in error, and this notice advises that HUD is withdrawing the proposed information collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: November 22, 2011.

Ronald Y. Spraker,

Associate General Deputy Assistant, Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2011–30777 Filed 11–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5589–N–01]

The Performance Review Board

AGENCY: Office of the Deputy Secretary, HUD.

ACTION: Notice of Appointments.

SUMMARY: The Department of Housing and Urban Development announces the appointments of, Estelle B. Richman, Karen Newton Cole, Peter J. Grace, Jemine A. Bryon, Clifford D. Taffett, Bryan Greene, Kevin M. Simpson, Lori Michalski, Donald J. LaVoy, Patricia A. Hoban-Moore, and Kevin R. Cooke, as members of the Departmental Performance Review Board. The address is: Department of Housing and Urban Development, Washington, DC 20410–0050.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Gwendolyn Fleming, Deputy Director, Office of Executive Resources, Department of Housing and Urban Development, Washington, DC 20410. Telephone (202) 708–1381. (This is not a toll-free number)

Dated: November 18, 2011.

Estelle B. Richman,

Acting Deputy Secretary.

[FR Doc. 2011–30620 Filed 11–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5588–N–01]

Notice of Single Family Loan Sales (SFLS 2012–1)

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of sales of mortgage loans.

SUMMARY: This notice announces HUD's intention to competitively sell certain unsubsidized single family mortgage loans, in a sealed bid sale offering called SFLS 2012–1, without Federal Housing Administration (FHA) mortgage insurance. This notice also generally describes the bidding process for the sale and certain persons who are ineligible to bid. This first sale of Fiscal Year (FY) 2012 is scheduled for December 7, 2011. FHA also expects to conduct two additional sales in FY 2012 in April and September 2012.

DATES: For this sale action, the Bidder's Information Package (BIP) was made available to qualified bidders on or about November 9, 2011. Bids for the SFLS 2012–1 sale must be submitted on the bid date, which is currently scheduled for December 7, 2011 (Bid Date). HUD anticipates that award(s) will be made on or about December 8, 2011 (the Award Date).

ADDRESSES: To become a qualified bidder and receive the BIP, prospective bidders must complete, execute, and submit a Confidentiality Agreement and a Qualification Statement acceptable to HUD. Both documents are available via the HUD Web site at: *http://www.hud.gov/sfloansales* or via: *http://www.DebtX.com.* Please mail and fax executed documents to SEBA Professional Services: SEBA Professional Services, c/o The Debt Exchange, 133 Federal Street, 10th Floor, Boston, MA 02111, Attention: HUD SFLS Loan Sale Coordinator, Fax: 1–(617) 531–3499.

FOR FURTHER INFORMATION CONTACT: John Lucey, Deputy Director, Asset Sales Office, Department of Housing and Urban Development, 451 Seventh Street SW., Room 3136, Washington, DC 20410–8000; telephone number (202) 708–2625, extension 3927. Hearing- or speech-impaired individuals may call (202) 708–4594 (TTY). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: HUD announces its intention to sell in SFLS 2012–1 certain unsubsidized non-performing mortgage loans (Mortgage Loans) secured by single family properties located throughout the United States. A listing of the Mortgage Loans is included in the due diligence materials made available to qualified bidders. The Mortgage Loans will be sold without FHA insurance and with servicing released. HUD will offer qualified bidders an opportunity to bid competitively on the Mortgage Loans.

The Bidding Process

The BIP describes in detail the procedure for bidding in SFLS 2012–1. The BIP also includes a standardized non-negotiable Conveyance, Assignment and Assumption Agreement (CAA Agreement). Qualified bidders will be required to submit a deposit with their bid. Deposits are calculated based upon each qualified bidder's aggregate bid price.

HUD will evaluate the bids submitted and determine the successful bid, in terms of the best value to HUD, in its sole and absolute discretion. If a qualified bidder is successful, the qualified bidder's deposit will be non-refundable and will be applied toward the purchase price. Deposits will be returned to unsuccessful bidders. For the SFLS 2012–1 sale action, settlements are expected to take place on or about December 22, 2011 and February 14, 2012.

This notice provides some of the basic terms of sale. The CAA Agreement, which is included in the BIP, provides comprehensive contractual terms and conditions. To ensure a competitive bidding process, the terms of the bidding process and the CAA Agreement are not subject to negotiation.

Due Diligence Review

The BIP describes how qualified bidders may access the due diligence materials remotely via a high-speed Internet connection.

Mortgage Loan Sale Policy

HUD reserves the right to remove Mortgage Loans from SFLS 2012–1 at any time prior to the Award Date. HUD also reserves the right to reject any and all bids, in whole or in part, and include any Mortgage Loans in a later sale. Deliveries of Mortgage Loans will occur in two monthly settlements and the number of Mortgage Loans delivered will vary depending upon the number of Mortgage Loans the Participating Servicers have submitted for the payment of an FHA insurance claim. The Participating Servicers will not be able to submit claims on loans that are not included in the Mortgage Loan Portfolio set forth in the BIP.

There can be no assurance that any Participating Servicer will deliver a minimum number of Mortgage Loans to HUD or that a minimum number of Mortgage Loans will be delivered to the Purchaser.

The SFLS 2012–1 sale of Mortgage Loans are assigned to HUD pursuant to section 204(a)(1)(A) of the National Housing Act as amended under Title VI of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999. The sale of the Mortgage Loans is pursuant to section 204(g) of the National Housing Act.

Mortgage Loan Sale Procedure

HUD selected an open competitive whole-loan sale as the method to sell the Mortgage Loans for this specific sale transaction. For the SFLS 2012–1, HUD has determined that this method of sale optimizes HUD's return on the sale of these Mortgage Loans, affords the greatest opportunity for all qualified bidders to bid on the Mortgage Loans,

and provides the quickest and most efficient vehicle for HUD to dispose of the Mortgage Loans.

Bidder Ineligibility

In order to bid in the 2012–1 sale as a qualified bidder, a prospective bidder must complete, execute and submit both a Confidentiality Agreement and a Qualification Statement acceptable to HUD. If any of the following apply to (i) A prospective bidder, (ii) the prospective bidder's significant (>10%) owners and persons with authority or control over the prospective bidder; (iii) any individuals/entities related to the prospective bidder (''Related Entities'' as defined below) or (iv) significant (>10%) owners and person with authority or control of such Related Entities, then the prospective bidder is ineligible to bid on any of the Mortgage Loans included in SFLS 2012–1. Related Entities, as used in this Notice, is defined as: (a) two entities that have, (i) significant common purposes and substantial common membership or (ii) directly or indirectly, substantial common direction or control; or (b) Either entity owns (directly or through one or more entities) a 50 percent or greater interest in the capital or profits of the other. For this purpose, entities treated as related entities under this definition shall be treated as one entity.

1. An employee of HUD, a member of such employee's household, or an entity owned or controlled by any such employee or member of such an employee's household with household to be inclusive of the employee's father, mother, stepfather, stepmother, brother, sister, stepbrother, stepsister, son, daughter, stepson, stepdaughter, grandparent, grandson, granddaughter, father-in-law, mother-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, first cousin, the spouse of any of the foregoing, and the employee's spouse.

2. An individual or entity that is currently debarred, suspended, or excluded from doing business with HUD pursuant to the Governmentwide Suspension and Debarment regulations at Title 2 of the Code of Federal Regulations, Parts 180 and 2424;

3. An individual or entity that has been suspended, debarred or otherwise restricted by any Department or Agency of the Federal Government or of a State Government from doing business with such Department or Agency;

4. An individual or entity that has been debarred, suspended, or excluded from doing mortgage related business, including having a business license suspended, surrendered or revoked, by any federal, state or local government agency, division or department;

5. A contractor, subcontractor and/or consultant or advisor (including any agent, employee, partner, director, principal or affiliate of any of the foregoing) who performed services for or on behalf of HUD in connection with single family asset sales;

6. An individual or entity that uses the services, directly or indirectly, of any person or entity ineligible under subparagraphs 1 through 3 above to assist in preparing any of its bids on the Mortgage Loans;

7. An individual or entity which employs or uses the services of an employee of HUD (other than in such employee's official capacity) who is involved in single family asset sales;

8. An entity or individual that serviced or held any Mortgage Loan at any time during the 2-year period prior to the Award Date is ineligible to bid on such Mortgage Loan or on the pool containing such Mortgage Loan;

9. An entity or individual that is: (a) any affiliate or principal of any entity or individual described in the preceding sentence (sub-paragraph 8); (b) any employee or subcontractor of such entity or individual during that 2-year period prior to Award Date; or (c) any entity or individual that employs or uses the services of any other entity or individual described in this paragraph in preparing its bid on such Mortgage Loan; or

10. An entity that has had its right to act as a Government National Mortgage Association (Ginnie Mae) issuer and its interest in mortgages backing Ginnie Mae mortgage-backed securities extinguished and terminated by Ginnie Mae.

Freedom of Information Act Requests

HUD reserves the right, in its sole and absolute discretion, to disclose information regarding SFLS 2012–1, including, but not limited to, the identity of any successful qualified bidder and its bid price or bid percentage for any pool of loans or individual loan, upon the closing of the sale of all the Mortgage Loans. Even if HUD elects not to publicly disclose any information relating to SFLS 2012–1, HUD will have the right to disclose any information that HUD is obligated to disclose pursuant to the Freedom of Information Act and all regulations promulgated thereunder.

Scope of Notice

This notice applies to SFLS 2012–1 and does not establish HUD's policy for the sale of other mortgage loans.

Dated: November 23, 2011.

Carol Galante,

Acting Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2011–30775 Filed 11–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Tribal Probate Codes

AGENCIES: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs is submitting to the Office of Management and Budget (OMB) a request for renewal for the collection of information titled ''Tribal Probate Codes.'' The information collection is currently authorized by OMB Control Number 1076–0168, which expires November 30, 2011.

DATES: Interested persons are invited to submit comments on or before *December 29, 2011.*

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_DOCKET@omb.eop.gov.* Please send a copy of your comments to Charlene Toledo, Bureau of Indian Affairs, Director, Special Projects, BIA Division of Probate Services, 2600 N Central Ave STE MS102, Phoenix, AZ 85004; *email: Charlene.Toledo@bia.gov.*

FOR FURTHER INFORMATION CONTACT: Charlene Toledo (505) 563–3371. You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

As sovereignties, federally recognized tribes have the right to establish their own probate codes. When those probate codes govern the descent and distribution of trust or restricted property, they must be approved by the Secretary of the Department of the Interior. The American Indian Probate Reform Act of 2004 (AIPRA) amendments to the Indian Land Consolidation Act, 25 U.S.C. 2201 *et seq,* provides that any tribal probate code, any amendment to a tribal probate

code, and any free-standing single heir rule are subject to the approval of the Secretary if they contain provisions governing trust lands. This statute also establishes the basics of review and approval of tribal probate codes. This information collection covers tribes' submission of tribal probate codes, amendments, and free-standing single heir rules containing provisions regarding trust lands to the Secretary for approval. We are adjusting the estimated number of respondents down to 10, based on the number of submissions received per year since AIPRA was passed.

II. Request for Comments

The BIA requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. Approval for this collection expires November 30, 2011. Response to the information collection is required to obtain a benefit.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, email address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0168.

Title: Tribal Probate Codes, 25 CFR 18.

Brief Description of Collection: Submission of this information is required to comply with ILCA, as amended by AIPRA, 25 U.S.C. 2201 *et seq.,* which provides that Indian tribes must obtain Secretarial approval for all tribal probate codes, amendments, and free-standing single heir rules that govern the descent and distribution of trust or restricted lands.

Type of Review: Extension without change of a currently approved collection.

Respondents: Indian tribes.

Number of Respondents: 10 per year, on average.

Total Number of Responses: One per respondent, on occasion.

Estimated Time per Response: One-half hour.

Estimated Total Annual Burden: 5 hours.

Dated: November 10, 2011.

Alvin Foster,

Assistant Director for Information Resources.

[FR Doc. 2011–30646 Filed 11–28–11; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Renewal of Agency Information Collection for Probate of Indian Estates

AGENCIES: Bureau of Indian Affairs, Interior.

ACTION: Notice of submission to OMB.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Indian Affairs is submitting to the Office of Management and Budget (OMB) a request for renewal for the collection of information titled ''Probate of Indian Estates, Except for Members of the Osage Nation and the Five Civilized Tribes.'' The information collection is currently authorized by OMB Control Number 1076–0169, which expires November 30, 2011.

DATES: Interested persons are invited to submit comments on or before December 29, 2011.

ADDRESSES: You may submit comments on the information collection to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an email to: *OIRA_DOCKET@omb.eop.gov*. Please send a copy of your comments to Charlene Toledo, Bureau of Indian Affairs, Director, Special Projects, BIA Division of Probate Services, 2600 N Central Ave STE MS102, Phoenix, AZ 85004; email: *Charlene.Toldeo@bia.gov*.

FOR FURTHER INFORMATION CONTACT: Charlene Toledo, Bureau of Indian Affairs, Director, Special Projects, at (505) 563–3371. You may review the ICR online at *http://www.reginfo.gov*. Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Secretary of the Interior probates the estates of individual Indians owning trust or restricted property in accordance with 25 U.S.C. 372, 373. In order to compile the probate file, the Bureau of Indian Affairs (BIA) must obtain information regarding the deceased from individuals and the tribe. This renewal does not make any adjustments to the estimated burden hours or otherwise change the approved information collection.

II. Request for Comments

The BIA requests that you send your comments on this collection to the location listed in the **ADDRESSES** section. Your comments should address: (a) The necessity of the information collection for the proper performance of the agencies, including whether the information will have practical utility; (b) the accuracy of our estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or conduct, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number. Approval for this collection expires November 30, 2011. Response to the information collection is required to obtain a benefit.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section during the hours of 9 a.m.–5 p.m., Eastern Time, Monday through Friday except for legal holidays. Before including your address, phone number, email address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

OMB Control Number: 1076–0169.

Title: Probate of Indian Estates, Except for Members of the Osage Nation and the Five Civilized Tribes, 25 CFR part 15.

Brief Description of Collection: This part contains the procedures that the Secretary of the Interior follows to initiate the probate of the trust estate for a deceased person who owns an interest in trust or restricted property. The Secretary must perform the information collection requests in this part to obtain the information necessary to compile an accurate and complete probate file. This file will be forwarded to the Office of Hearings and Appeals (OHA) for disposition. Responses to these information collection requests are required to create a probate file for the decedent'e estate so that OHA can determine the heirs of the decedent and order distribution of the trust assets in the decedent's estate.

Type of Review: Extension without change of a currently approved collection.

Respondents: Indians, businesses, and tribal authorities.

Number of Respondents: 64,915.

Frequency of Collection: One per respondent each year with the exception of tribes that may be required to provide enrollment information on an average of approximately 10 times/year.

Description of Respondents: Indians, businesses, and tribal authorities.

Estimated Hours per Response: Ranges from 0.5 hour to 45.5 hour (see table below).

Estimated Total Annual Responses: 76,685.

Estimated Total Annual Burden Hours: 1,037,493.

CFR Section	Description of info collection requirement	Number of responses per yr	Hours per response	Total burden hours
15.9	File affidavit to self-prove will, codicil, or revocation	1,000	0.5	500
15.9	File supporting affidavit to self-prove will, codicil, or revocation	2,000	0.5	1,000
15.104	Reporting req.- death certificate	5,850	5	29,250
15.105	Provide probate documents	21,235	45.5	966,193
15.203	Provide tribal information for probate file	5,650	2	11,300
15.301	Reporting funeral expenses	5,850	2	11,700
15.305	Provide info on creditor claim (6 per probate)	35,100	0.5	17,550
Total		76,685		1,037,493

Dated: November 10, 2011.

Alvin Foster,

Assistant Director for Information Resources.

[FR Doc. 2011–30662 Filed 11–28–11; 8:45 a.m.]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14862–A, F–14862–A2; LLAK965000–L14100000–HY0000–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Decision Approving Lands for Conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that the Bureau of Land Management (BLM) will issue an appealable decision to Kuitsarak, Inc. The decision approves the surface estate in the lands described below for conveyance pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*). The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Kuitsarak, Inc. The lands are in the vicinity of Goodnews Bay, Alaska, and are located in:

Seward Meridian, Alaska

T. 10 S., R. 72 W.,
Secs. 2 and 10.
Containing 1,280 acres.

T. 11 S., R. 72 W.,
Sec. 2.
Containing 35 acres.
Aggregating 1,315 acres.

Notice of the decision will also be published four times in *The Delta Discovery.*

DATES: Any party claiming a property interest in the lands affected by the decision may appeal the decision within the following time limits:

1. Unknown parties, parties unable to be located after reasonable efforts have been expended to locate, parties who fail or refuse to sign their return receipt, and parties who receive a copy of the decision by regular mail which is not certified, return receipt requested, shall have until December 29, 2011 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

3. Notices of appeal transmitted by electronic means, such as facsimile or email, will not be accepted as timely filed.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The BLM by phone at (907) 271–5960 or by email at *ak.blm.conveyance@blm.gov.* Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-(800) 877–8339 to contact the BLM during normal business hours. In addition, the FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the BLM.

The BLM will reply during normal business hours.

Ralph L. Eluska Sr.,

Land Transfer Resolution Specialist, Branch of Land Transfer Adjudication II.

[FR Doc. 2011–30738 Filed 11–28–11; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO200–LLCOF00000–L16520000–XX0000]

Notice of Meeting, Rio Grande Natural Area Commission

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976 (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management

(BLM) Rio Grande Natural Area Commission will meet as indicated below.

DATES: The meeting will be held from 10 a.m. to 3 p.m. on December 14, 2011.

ADDRESSES: Hampton Inn Alamosa, 710 Mariposa Street, Alamosa, CO 81101.

FOR FURTHER INFORMATION CONTACT: Denise Adamic, Public Affairs Specialist, BLM Front Range District Office, 3028 East Main, Canon City, CO 81212. *Phone:* (719) 269–8553. *Email:* dadamic@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–(800) 877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Rio Grande Natural Area Commission was established in the Rio Grande Natural Area Act (16 U.S.C. 460rrr–2). The nine-member Commission advises the Secretary of the Interior, through the BLM, concerning the preparation and implementation of a management plan relating to non-Federal land in the Rio Grande Natural Area, as directed by law. Planned agenda topics include: Discussing resource concerns and goals that should be addressed in the management plan, who stakeholders are in the area, and how internal and external communications will be addressed. In addition, the BLM will give a presentation on Tribal Consultation. This meeting is open to the public. The public may offer oral comments at 2:30 p.m. or written statements may be submitted for the Commission's consideration. Please send written comments to Denise Adamic at the address above by December 12, 2011. Depending on the number of persons wishing to comment and time available, the time for individual oral comments may be limited. Summary minutes for the Commission Meeting will be maintained in the San Luis Valley Field Office and will be available for public inspection and reproduction during regular business hours within 30 days following the meeting. Meeting minutes and agenda are also available at: *http://www.blm.gov/co/st/en/fo/slvfo.html.*

Dated: November 23, 2011.

Steven Hall,

Acting State Director.

[FR Doc. 2011–30838 Filed 11–28–11; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMA010000 L10200000.EE0000]

Reopening the Call for Nominations for the Albuquerque District Resource Advisory Council

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to reopen the nomination period for the Bureau of Land Management's (BLM) Albuquerque District Resource Advisory Council (RAC) in Category 3. The Albuquerque RAC provides advice and recommendations to the BLM on land use planning and management of the public lands within the BLM's Albuquerque District.

DATES: All nominations must be received no later than December 29, 2011.

ADDRESSES: Contact Edwin Singleton, Albuquerque District Office, BLM, 435 Montano NE., Albuquerque, New Mexico 87107, (505) 761–8700.

FOR FURTHER INFORMATION CONTACT: Gina Melchor, RAC Coordinator, Albuquerque District Office, BLM, 435 Montano Road NE., Albuquerque, New Mexico 87107, (505) 761–8935, *email:* rmelchor@blm.gov. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-(800) 877–8339 to contact the above individual during business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The Federal Land Policy and Management Act of 1976 (FLPMA) (43 U.S.C. 1739) directs the Secretary of the Interior (Secretary) to involve the public in planning and issues related to management of lands administered by the BLM. Section 309 of FLPMA directs the Secretary to establish 10- to 15-member citizen-based advisory councils that are consistent with the Federal Advisory Committee Act (FACA). The rules governing RACs are found at 43 CFR subpart 1784. As required by FACA, RAC membership must be balanced and representative of the various interests concerned with the management of the public lands. There is one vacancy open in category 3, representing State, county, or local elected office; representatives and employees of a State agency responsible for management of natural resources, land, or water; representatives of Indian tribes within or adjacent to the area for which the Council is organized; representatives of academia who are employed in natural resources management or the natural sciences; or the public-at-large.

Individuals may nominate themselves or others. Nominees must be residents of the State in which the RAC has jurisdiction. The BLM will evaluate nominees based on their education, training, experience, and knowledge of the geographical area of the RAC. Nominees should demonstrate a commitment to collaborative resource decision-making. The Obama Administration prohibits individuals who are currently federally registered lobbyists from being appointed or re-appointed to FACA and non-FACA boards, committees, or councils. The following must accompany all nominations:

—Letters of reference from represented interests or organizations;

—A completed background information nomination form; and

—Any other information that addresses the nominee's qualifications.

Certification Statement: I hereby certify that the BLM's Albuquerque District RAC is necessary and in the public interest in connection with the Secretary's responsibilities to manage the lands, resources, and facilities administered by the BLM.

Authority: 43 CFR 1784.4–1

Jesse Juen,

Acting State Director.

[FR Doc. 2011–30744 Filed 11–28–11; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

[2253–665]

National Park Service

Notice of Intent to Repatriate Cultural Items: Tennessee Valley Authority and the University of Tennessee McClung Museum, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Tennessee Valley Authority (TVA) and the University of Tennessee McClung Museum (McClung Museum), in consultation with the appropriate Indian tribes, have determined that the cultural items in this notice meet the definition of unassociated funerary objects, and repatriation to the Indian tribes stated below may occur if no additional claimants come forward.

Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the TVA and McClung Museum.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact TVA at the address below by December 29, 2011.

ADDRESSES: Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT 11D, Knoxville, TN 37902–1401, telephone (865) 632–7458.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the custody of the McClung Museum and control of TVA, Knoxville, TN that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

From 1967 through the mid 1980's, Native American graves were excavated by professional archeologists from the McClung Museum during TVA's construction of the Tellico reservoir. Five of these sites had historic Overhill Cherokee occupations and graves: Chota, Tanasee, Tomotley, Toqua and Citico. Based on an agreement between TVA and the Eastern Band of Cherokee Indians of North Carolina, historic Cherokee human remains recovered during the Tellico Reservoir project were transferred to the Tribe for reburial in 1986. The objects from these graves, however, continued to be curated by the McClung Museum. Since neither TVA nor the McClung Museum has possession or control of the human remains, the objects are unassociated funerary objects.

Based on both historical documents and oral tradition, the sites of Chota, Tanasee, Tomotley, Toqua and Citico were known to have had Cherokee occupations. Each village is illustrated in a map Lt. Henry Timberlake drafted in 1762, based on his stay with the Cherokee in the lower Little Tennessee River valley.

At the Chota site (40MR2) 54 graves from the historic Overhill Cherokee occupation were excavated. The unassociated funerary objects from these graves include 485 metal artifacts comprised of buttons, bells, nails, rings, buckles, axes, knives and musket balls made from iron, brass, pewter, silver and lead; three glass mirrors or mirror fragments; six glass vessel fragments; one glass bottle; twelve mineral samples including vermillion, barite, and one unshaped piece of smelted lead; four steatite pipes; one catlinite pipe; two clay siltstone pipes; three projectile points; two chert flakes; cloth fragments; one wooden fire horn plug; one conch shell ear pin; a deer metapodial bone; approximately 18,444 glass beads of varying size and color; and 36 beads made from shell.

The Tanasee site (40MR62) is immediately adjacent to the Chota site and initial excavations did not distinguish between them. Seventeen graves are attributed to the Overhill Cherokee occupation at the Tanasee site. The unassociated funerary objects from these graves include 21 projectile points; one chipped stone flake; ten metal objects including brass buttons, a brass arrow point, a brass rumbler bell, iron scissors, strike-a-light and knife blade and other iron and brass fragments; animal bone fragments; one bone comb; one pottery sherd; approximately 10,748 glass beads of various sizes and colors; and 10 beads made from conch shells.

The Tomotley site (40MR5) was excavated as a result of the Tellico Reservoir project. Nineteen graves are attributed to the historic Overhill Cherokee occupation of the site. The funerary objects from these graves include 216 metal objects comprised of iron tacks, knives, a straight razor, needle shanks, and a bayonet; silver objects include a ring, ear rings, brooches and shirt sleeve links; brass wire; brass sheet fragments; one brass necklace; pewter shirt sleeve links; one copper tube; one lead shot and ball; 30 fragments of glass; one glass mirror fragment; botanical remains including burned wood and seven cloth fragments; two lots of vermillion; one piece of lead; one chipped stone gun flint; approximately 8,545 glass beads; one shell bead; and 39 copper beads.

The Toqua site (40MR6) was excavated as a result of the Tellico Reservoir project. Nineteen graves are attributed to the historic Overhill Cherokee occupation of the site. Unassociated funerary objects include 52 pieces of metal comprised of four brass buttons, a bell, wire, bracelets, disks, ornaments, one gun part, one iron gun barrel, strike-a-light, scissors, one hoe, two pewter buttons, a copper kettle, a silver brooch, and three lead musket balls; two projectile points; three gun flints; five chipped stone objects; six shell pendants; three pieces of glass; three samples of red ochre; three mink skull fragments; one piece of cord possibly used with a tinkler; approximately 11,294 glass beads of various sizes and colors; and six shell beads.

The Citico site (40MR7) was excavated as a result of the Tellico Reservoir project. There were twenty-five graves attributed to the historic Overhill Cherokee occupation of the site. The unassociated funerary objects from these graves include 145 objects made of metal including copper objects comprised of five bells, beads, cones used as tinklers, five rings, tubes and pendants; brass items comprised of ''C'' bracelets, 28 buttons, and a neck collar ornament; iron items comprised of two razors, ''C'' bracelets, cones used as tinklers, finger rings, a knife, an awl with a bone handle and an axe; three silver tube beads; animal bone; two bone or antler ear pins; leather fragments; five samples of vermillion and red ochre; one quartz crystal; fabric fragments; wood pieces; three shell gorgets; two shell ear pins; one shell bead; one steatite pipe; one ground whetstone; and approximately 3,949 glass beads of various sizes and colors.

Determinations Made by the TVA and McClung Museum

Officials of the TVA and McClung Museum have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the approximately 54,000 cultural items of which approximately 53,000 are glass beads described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects above and the Cherokee Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereinafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT 11D, Knoxville, TN 37902–

1401, telephone (865) 632–7458 before December 29, 2011. Repatriation of the unassociated funerary objects to The Tribes may proceed after that date if no additional claimants come forward.

The TVA is responsible for notifying The Tribes that this notice has been published.

Dated: November 22, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–30618 Filed 11–28–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Intent To Repatriate Cultural Items: U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, Walla Walla, WA and the Museum of Anthropology, Washington State University, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Defense, Army Corps of Engineers, Walla Walla District, in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact U.S. Department of Defense, Army Corps of Engineers, Walla Walla District at the address below by December 29, 2011.

ADDRESSES: LTC David Caldwell, U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, 201 North Third Ave., Walla Walla, WA 99362, telephone (509) 527–7700.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District (Corps), Walla Walla, WA, and in the physical custody of the Washington State University, Museum of Anthropology (WSU), Pullman, WA that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

Sites 45BN15, 45BN55, 45BN161, Site 45BN45 (aka 45BN186), 45FR101, 45WW63 and 45BN3 are situated in the McNary Lock and Dam Project lands, managed by the Corps, who initiated land acquisition processes for the Project in 1947. Sites 45WW16 and 45WW30 are situated in the Ice Harbor Lock and Dam Project lands on the Snake River, managed by the Corps, who initiated land acquisition processes for the Project in 1955. Sites 45FR52 and 45WT56 are situated in the Lower Monumental Lock and Dam Project lands on the Snake River, managed by the Corps, who initiated land acquisition processes for the Project in 1960. Site 45GA18 is situated in the Little Goose Lock and Dam Project lands on the Snake River, managed by the Corps, who initiated land acquisition processes for the Project in 1963. Sites 45WT47, 45WT65, 45WT97, 45WT99, 45WT102, 45AS81, 45GA100 and 45GA47 are situated in the Lower Granite Lock and Dam Project lands on the Snake River, managed by the Corps, who initiated land acquisition processes for the Project in 1965.

Site 45AS81

In 1971, the University of Idaho's (UI) Nez Perce Grave Removal Project (NPGRP) excavated 91 burials from Site 45AS81, the Alpaweyma Burial Site in Asotin County, WA. Materials from the 1971 UI excavations were transported to the UI Laboratory of Anthropology in Moscow, ID. Funerary objects from 45AS81 were transferred to Washington State University (WSU) Museum of Anthropology in 1998; this collection includes unassociated funerary objects from Burials 1, 4–21, 23, 27, 31, 36, 39–57, 59, 61, 64–65, 67, 69–74B, 76, 79–81, 83–94, 96, 98–99, 101, 103, as well as from the backfill and the ground surface. Funerary objects from the site date from the Piqunin Phase (ca. 1300–1700 AD) to the late nineteenth century. The 633 unassociated funerary objects are: 1 bone whistle, 1 bone necklace, 2 bone combs, 1 horse tooth pendant, 1 bone gaming piece, 1 projectile point, 1 preform, 3 stone cores, 5 brass tubes, 1 cap box, 1 ceramic pipe, 1 ceramic doll, 1 powder horn cap, 1 locket, 1 crucifix, 1 lamp wick holder, 2 marbles, 1 book, 1 lamp wick, 2 bottles, 3 spoons, 1 copper pendant, 13 brass bracelets, 3 studded leather bracelets, 7 rings, 1 bell, 7 dimes, 7 shell pendants, 3 lots of animal remains, 36 lots of stone flakes, 17 lots of metal fragments, 1 lot of wooden beads, 312 lots of glass beads, 12 lots of metal beads, 1 lot of fish hooks, 1 lot of concho fragments, 18 lots of leather fragments, 1 lot of tin can fragments, 39 lots of buttons, 1 lot of hook and eye, 6 lots of buckle fragments, 14 lots of fabric remnants, 1 lot of matting, 3 lots of mirror fragments, 5 lots of small bells, 2 lots of gun fragments, 2 lots of ammunition, 33 lots of nails, 38 lots of wood fragments, 12 lots of shell beads, 2 lots of charcoal, 1 lot of petrified wood, 1 lot of red ochre.

Site 45BN3

In 1948, the Smithsonian Institution's River Basin Survey Project (SRBS) removed funerary objects from Site 45BN3, a pre-contact-protohistoric village site located on Berrian's Island in the Columbia River in Benton County, WA. Portions of the collection were originally housed at the University of Washington (UW) Burke Museum, Seattle, WA, and were transferred to WSU in 1996, at the Corps' request. WSU inventoried the collection in 2002 and identified 170 unassociated funerary objects: 2 adzes, 4 antler wedges, 1 awl, 2 bear teeth, 20 beaver incisors, 6 bifaces, 3 bird bone whistles, 1 bone pendant, 1 carved antler item, 1 carved bone item, 5 copper pendants, 6 digging stick handles, 5 elk tooth beads, 1 incised bird bone, 3 incised stones, 1 iron ferrule, 1 metal ax, 2 metal bracelets, 6 metal knives, 1 net weight, 3 pestles, 2 polished bone items, 8 projectile points, 2 shell pendants, 4 stone abraders, 1 stone figurine, 1 stone pipe, 3 stone scrapers, 7 lots of bag residue, 2 lots of bird remains, 1 lot of bone beads, 2 lots of fish remains, 1 lot of glass beads, 3 lots of mammal remains, 3 lots of matting fragments, 4 lots of metal beads, 6 lots of metal fragments, 4 lots of natural stone, 6 lots of ochre, 8 lots of seed beads, 19 lots of shell beads, 2 lots of shellfish remains, 1 lot of stone beads, 3 lots of stone flakes, 2 lots of wood fragments.

Site 45BN15

In 1947, 1951, and 1952, funerary objects were removed from Site 45BN15, on Rabbit Island in the Columbia River, Benton County, WA. UW initially housed the portions of the collections

that were later transferred to WSU in 1997 and 2001. In 2002, WSU inventoried the collections and identified 65 unassociated funerary objects: 1 bear claw, 1 biface, 2 digging stick handles, 5 incised beaver teeth, 1 pestle, 3 polished bone items, 1 polished ground stone, 4 projectile points, 1 stone core, 8 lots of bird remains, 1 lot of mammal remains, 3 lots of natural stone, 1 lot of ochre, 18 lots of shell beads, and 15 lots of stone flakes. The burials at Rabbit Island were interpreted to have been from two distinct time periods based on burial traditions/methods; Rabbit Island II dated to at least pre-1750 AD; and Rabbit Island I dated to the Frenchman-Springs Phase (3500–1500 BP).

Site 45BN55

In 1949 and 1950, funerary objects were removed from Site 45BN55, a village site on Sheep Island in Benton County, WA. The collections were initially housed at UW, who transferred them to WSU in 1997 at the request of the Corps. In 2002, WSU inventoried the collections and identified 42 unassociated funerary objects: 5 bifaces, 1 bone needle, 4 bone pendants, 13 carved bone items, 11 projectile points, 1 stone pendant, 1 lot of fused bone sand with basket impressions, 2 lots of natural stone, 1 lot of seed beads, 2 lots of stone flakes, and 1 lot of worked stone fragments. The burials at the site were dated to the late pre-contact period.

Site 45BN161

In 1968, 1975, and 1982, funerary objects were removed from Site 45BN161 during salvage archeology efforts by UI and the Mid-Columbia Archaeological Society (MCAS). The majority of the excavated collection is reported to have been reburied at the West Richland Cemetery (also known as the Wanawish Cemetery) in 1973, 1976, and 1982, by the Confederated Bands and Tribes of the Yakama Nation, Washington. Inventories by WSU in 2000 and 2003 identified 23 unassociated funerary objects: 1 shell pendent, 1 shell bracelet, 1 hammerstone, 3 ground stone items, 1 lot of bag residue, 1 lot of debitage, 7 lots of shell beads, 2 lots of mammal remains, 1 lot of plant remains, 3 lots of shell remains, 1 lot of ochre, and 1 soil sample. The archeological data indicates a nearly continuous distribution of cultural material at 45BN161 spanning approximately 2,000 years. Most of burials interpreted to date to the late pre-contact-protohistoric occupation.

Site 45BN45 (aka 45BN186)

In 1976, UI removed funerary objects from Site 45BN45 (aka 45BN186) that were from previously disturbed burials. The majority of the excavated collection was reburied at the Wanawish Cemetery, and the remaining funerary objects were transported to UI. In 1995, the collections were transferred from UI to WSU. The seven funerary objects are: 2 chert projectile points, 1 basalt adze blade, 1 bone awl, 1 antler wedge, 1 lot of glass beads, and 1 lot of shell beads. The funerary objects date to the late pre-contact or proto-historic period.

Site 45FR52

In 1964, WSU investigated Site 45FR52, also known as the Mesa Burial site, in Franklin County, WA. The investigation reported the site as ''a historic burial that had been completely destroyed by amateur looters.'' No human remains were found; however, materials thought to be funerary objects were removed from the site and transported to WSU. The site was tested in 1992 by BOAS, Inc. during the Palouse Canyon Archaeological District project. Materials ''commonly associated with historic and pre-contact Native American burials'' were recovered and transported to WSU. The 27 unassociated funerary objects are: 1 copper fragment, 1 cinch ring, 1 stone chopper, 1 stone pipe fragment, 2 lots of mammal remains, 5 lots of metal fragments, 10 lots of glass beads, 2 lots of stone flakes, 1 lot of wood fragments, 1 lot of nails, and 2 lots of leather fragments. The unassociated funerary objects removed from 45FR52 in 1964 are interpreted to date to 1820–1850 based on the types of historic period objects present; those removed in 1992 appear to date to the late precontact-protohistoric period (ca. 1300–1800 AD).

Site 45FR101

In 1967, funerary objects were removed from 45FR101, at Chiawana Park in Benton County, WA. An additional ten burials were removed from the site in 1967 during excavations led by WSU and assisted by the MCAS. In 1982, the burials were reportedly reburied at Wanawish Cemetery. From 1990–2000, funerary objects from the excavations were transferred from UI and MCAS members to WSU. Inventories conducted by WSU resulted in the identification of 6 unassociated funerary objects: 1 bone needle, 1 lot of stone flakes, 2 lots of shell beads, and 2 lots of natural stones. All of the burials at the site have been dated to the late pre-contact period.

Site 45GA18

From 1979–1981, UI and the Corps removed funerary objects from Site 45GA18 on Rice Bar in Garfield County, WA. Although no funerary objects were reported in any of the excavation reports, eight funerary objects were identified at WSU during the 2001 inventory (four defined as 45GA18 and 4 from either 45GA18 or 45GA101). The collection includes 4 confirmed unassociated funerary objects from 45GA18: 3 lots of shell beads, and 1 stone flake; and 4 unassociated funerary objects from either 45GA18 or 45GA101: 1 lot of elk tooth beads, 1 lot of glass beads, 1 lot of bone beads, and 1 projectile point. Funerary objects from Site 45GA18 were dated to the late pre-contact period based on funerary traditions documented at the site.

Site 45GA47

In 1971, a single burial was recovered under the NPGRP from Site 45GA47, and later reburied at the Hill Top Cemetery in Spalding, ID. In 1979, additional investigations were undertaken at the site and shell samples recovered by UI were dated to the Harder phase (805 BP±110). The two unassociated funerary objects from the site are 1 lot of debitage, and 1 hammerstone; both from Burial 1.

Site 45GA100

Funerary objects were removed during multiple investigations between 1968 and 1978 from Site 45GA100, the Offield Bar Cemetery, in Garfield County, WA. The cemetery consisted of 21 burials, four of which were considered to be Native American at the time of removal (Burials 18, 19, 20, and 21). Additional investigations by UI (1968, 1977, 1978) and WSU (1969) resulted in the removal of 16 additional burials (Burials 22–37) with associated funerary objects. The human remains from 45GA100 have been reburied and all funerary objects were transported to UI's Laboratory of Anthropology in Moscow, ID. Funerary objects, recovered from Burials 18, 20, 22–28, 31, and 36, were transferred from UI to WSU in 1998 and 2000. The 59 unassociated funerary objects are: 1 pestle, 1 net weight, 1 biface, 4 projectile points, 4 ground stone items, 2 shell pendants, 1 nephrite adze, 3 digging stick handles, 5 lots of wood fragments, 9 lots of stone flakes, 5 lots of mammal remains, 7 lots of nails, 1 lot of shellfish remains, 8 lots of basketry fragments, 3 lots of natural stone, 1 lot of shell beads, 1 lot of bird remains, 1 lot of charcoal, and 1 lot of elk tooth beads. The unassociated funerary objects from 45GA100 were

interpreted to date to the late pre-contact period, specifically the period 1650–1750 AD as reflected by funerary traditions documented at the site.

Site 45WT47

In 1971, UI's NPGRP excavated funerary objects from a cairn burial at Site 45WT47. In 1974, UI returned to Site 45WT47 and salvaged funerary objects from two additional burials. The human remains and funerary objects from both investigations were transported to UI and the human remains were reburied in 1978. The funerary objects were transferred from UI to WSU in 1998 and 2000. The 53 unassociated funerary objects are: 1 battered cobble, 1 bell, 2 combs, 1 digging stick handle, 1 gaming piece, 1 pestle, 2 shell pendants, 4 lots of buttons, 27 lots of glass beads, 1 lot of glass fragments, 1 lot of leather fragments, 1 lot of mammal remains, 2 lots of metal beads, 2 lots of metal fragments, 2 lots of nails, 2 lots of shell beads, 1 lot of soil, and 1 lot of stone flakes. Unassociated funerary objects from 45WT47, located at the known Nez Perce village of *Wawawai-pu,* appear to date to the late pre-contact period (Burial 1) to the early historic period (Burials 2–4) as reflected by the funerary traditions documented at the site.

Site 45WT56

In 1964, WSU removed funerary objects from three intact talus slope burial pits and surrounding disturbed pits at 45WT56, the Palus Talus Burial Site, in Whitman County, WA. Burials were designated as Pits 1, 2, and 3, and Burials 1A, 1B, 2, 3, 4, 5, 6, 7, and 8. The 15 unassociated funerary objects collected were transported to WSU: 2 lots of stone flakes, 5 lots of wood fragments, 4 lots of mammal remains, and 4 lots of bag residue. The items appear to date to the early historic period based on the presence of trade items; burial methods documented are characteristic of late pre-contact and early historic burial practices from the Lower Snake River.

Site 45WT65

During the 1971 season of the NPGRP, UI removed funerary objects from eight talus slope burials at 45WT65, the Nisqually John Talus/Indian Siding Site, in Whitman County, WA. The funerary objects were transferred from UI to WSU in 1998. The 114 unassociated funerary objects are: 1 bead and shell necklace, 2 bead necklaces, 1 button pendant, 1 metal ferrule, 1 metal ornament, 1 metal plate, 1 musket ball mold, 1 stone pipe, 1 stone scraper, 1 worked bone item, 2 unidentified items, 1 lot of bag residue, 1 lot of bird remains, 1 lot of bone beads, 2 lots of brass fragments, 2 lots of buttons, 1 lot of cordage, 50 lots of glass beads, 1 lot of horse tooth fragments, 1 lot of leather fragments, 5 lots of mammal remains, 1 lot of metal and glass beads, 4 lots of metal beads, 1 lot of natural stone, 2 lots of plant remains, 7 lots of shell beads, 1 lot of shellfish remains, 4 lots of stone flakes, 4 lots of thimbles, 6 lots of unidentified metal items, and 6 lots of wood fragments. Funerary objects and burial methods indicate that Site 45WT65 dates to the early historic period (post-1813); reflecting Lower Snake River late pre-contact Native American burial patterns.

Site 45WT97

In 1973, UI excavated funerary objects from a single burial (Burial 1) at Site 45WT97, a possible fishing camp on Wilma Bar in Whitman County, WA. The materials were transported to UI and in 1998 transferred to WSU. The six unassociated funerary objects are: 1 tubular pipe, 1 lot of wood fragments, 2 lots of mammal remains, 1 lot of stone flakes, and 1 lot of shell beads. The burial at 45WT97 in interpreted to date to the late pre-contact period based on the types of funerary objects (lithics and dentalia).

Site 45WT99

In 1973, UI recovered human remains and funerary objects from 19 burials discovered during railroad relocation activities at Site 45WT99, the Wilma Bar Silo Site in Whitman County, WA. The funerary objects collected were transported to UI after excavation. UI transferred one box of materials from the site to WSU in 2000. The 56 unassociated funerary objects are: 1 awl, 1 bone shuttle, 1 bone whistle, 2 dishes, 5 shell pendants, 1 stone scraper, 4 lots of charcoal, 3 lots of elk tooth beads, 3 lots of glass fragments, 2 lots of mammal remains, 3 lots of metal fragments, 2 lots of nails, 1 lot of ochre, 13 lots of shell beads, 1 lot of shell fish remains, 9 lots of stone flakes, and 4 lots of wood fragments. The relative lack of historic trade good in the burials, and burial methods documented at the Site indicated a late pre-contact inhumation.

Site 45WT102

In 1973, UI removed funerary objects from 18 cairn burials at Site 45WT102, the Wilma Bar Bench Burial Site in Whitman County, WA. The funerary objects collected were transported to UI after excavation and in 2000 were transferred to WSU. The 28 unassociated funerary objects are: 2 projectile points, 1 pestle, 1 shell pendant, 1 incised stone item, 1 bone comb, 3 lots of charcoal, 1 lot of button fragments, 6 lots of shell beads, 5 lots of stone flakes, 3 lots of antler fragments, 1 lot of leather fragments, 2 lots of nails, and 1 lot of mammal remains. The funerary objects from 45WT102 are interpreted to date to the late pre-contact-early historic periods based on the burial methods and funerary traditions exhibited at the site.

Site 45WW16

In 1948, artifacts were recovered from the surface of Site 45WW16 in Walla Walla County, WA. The site was documented by SRBS and the items were interpreted as funerary objects. Physical examination of the collections in 2011 suggested to WSU that these are unassociated funerary objects. The site is an open camp and rock image site that appears to date to the Harder Phase. The nine unassociated funerary objects are: 2 projectile points, 3 lots of glass beads, 2 lots of shell beads, 1 lot of metal fragments, and 1 lot of bag residue.

Site 45WW30

In 1959, WSU monitored the recovery of funerary objects from three burials (the Sheffler Cut Burials) exposed during railroad relocation at Site 45WW30, in Walla Walla County, WA. The materials collected were transported to WSU after excavation. The human remains from 45WW30 were reburied in 1982 at the Wanawish Cemetery in consultation with the Confederated Tribes of the Umatilla Indian Reservation, Oregon, and the Confederated Tribes and Bands of the Yakama Nation, Washington. The five unassociated funerary items are: 3 lots of glass beads, 1 lot of fabric, and 1 lot of metal fragments and chain. The funerary objects from 45WW30 appear to date between 1840 and 1860, based on the bead assemblage. The burial pattern at 45WW30 is common to post-contact Palus burials.

Site 45WW63

In 1977, the discovery of human remains and funerary objects were discovered within a burial at 45WW63, the Burbank Burial Site in Walla Walla County, WA, and reported to the Corps by the Walla Walla County Sheriff's Department. The burial was excavated by the Corps and archeologists from WSU and was described as ''a historic box burial of an 8–10 year old girl * * * [with] trade beads, copper bracelets, drilled pendant, abalone shell, spoon, porcelain cut, etc.'' (Allen 1977). The human remains were reburied at the Wanawish Cemetery and the funerary

objects were transferred to UI and subsequently to WSU. The 16 unassociated funerary objects are: 1 spoon, 1 hook and eye set, 12 lots of glass beads, 1 lot of fabric fragments, and 1 lot of nails. The funerary objects from 45WW63 appear to date to 1860–1880, based on the burial type (an extended cedar box lined with matting and accompanied by numerous historic-period funerary objects) and based on the type of funerary objects present.

Determinations Made by the U.S. Department Of Defense, Army Corps of Engineers, Walla Walla District

Officials of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, have determined that:

- Five lines of evidence—geographical, ethnographic, archeological, anthropological, and historical—support a cultural affiliation between the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of Warm Springs Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; and the Nez Perce Tribe, Idaho (hereinafter referred to as ''The Tribes'') and the associated funerary objects identified above. Additionally, a cultural relationship is determined to exist between the sites and collections, and the Wanapum Band, a non-Federally recognized Indian group (hereinafter referred to as ''The Indian Group'').
- Pursuant to 25 U.S.C. 3001(3)(B), the 1344 cultural items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects, The Tribes and The Indian Group. Information provided by The Tribes and The Indian Group shows that they are descended from the Native people who occupied these sites, and that the individuals buried along the Snake and mid-Columbia Rivers are their ancestors. The aforementioned tribes are all part of the more broadly defined Plateau cultural community having shared past and present traditional lifeways that bind them to common ancestors.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the unassociated funerary objects should contact LTC David Caldwell, U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, 201 North Third Ave., Walla Walla, WA 99362, telephone (509) 527–7700, before December 29, 2011. Repatriation of the unassociated funerary objects to The Tribes and The Indian Group may proceed after that date if no additional claimants come forward.

The U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, is responsible for notifying The Tribes and The Indian Group that this notice has been published.

Dated: November 22, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–30629 Filed 11–28–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

[2253–665]

National Park Service

Notice of Intent To Repatriate Cultural Items: Washington State University, Museum of Anthropology, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Washington State University, Museum of Anthropology (WSU), in consultation with the appropriate Indian tribes, has determined that the cultural items meet the definition of unassociated funerary objects and repatriation to the Indian tribes stated below may occur if no additional claimants come forward. Representatives of any Indian tribe that believes itself to be culturally affiliated with the cultural items may contact WSU.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the cultural items should contact WSU at the address below by December 29, 2011.

ADDRESSES: Mary Collins, Director, Washington State University, Museum of Anthropology, Pullman, WA 99164–4910, telephone (509) 335–4314.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate cultural items in the possession of WSU that meet the definition of unassociated funerary objects under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Items

In the 1960s, WSU transferred its ethnographic collection from the Conner Museum to the Museum of Anthropology. In June of 2011, the curator of collections at the Conner Museum found four unassociated funerary items in the museum storage area and transferred them to the Museum of Anthropology. The items include two brass bracelets, one necklace of brass and shell beads, and one antler digging stick handle. Of the four objects, the digging stick handle was the only item with documentation; it has a label indicating it was accessioned into the Conner Museum in 1924. All of the items show clear evidence of having been buried for some period of time and all are object types common to historic and proto-historic period burials along the Lower Snake River region of Washington State.

Beginning in the 1960s, Roderick Sprague, Professor Emeritus at the University of Idaho, began assembling a comparative collection of trade beads from archeological (mostly burial) sites along the Lower Snake River. In 2003, Dr. Sprague turned the collection over to the Museum of Anthropology. Most of the specimens in the collection were identified as to their site of origin; however, there are 66 lots of glass and metal bead specimens which have lost their site provenience labels and are assumed to have come from burial sites along the Lower Snake River.

In 2003, seven items were found at WSU, stored with the materials from 45AS9, and were determined to be from an unknown site. The seven items include: 1 button, 1 natural stone, 1 metal nut, 1 lot of glass beads, and 3 lots of shell beads. The exact site provenience of these items is not known, nor is it known when the items were acquired by WSU. Only one of the items, the natural stone, is labeled as having a burial association; however, the items resemble funerary objects commonly found in burials on the Lower Snake River.

In 1992, while performing an inventory and rehabilitation of the archeological collection from site 45FR40, a number of items labeled as coming from burial associations were identified. The records of the 1957 excavation at the site do not report any burial excavations and so it was determined that the site provenience of these items is unknown. The 16 cultural items include 1 button, 8 unidentified historic items, 1 lot of animal fur, 2 lots of plant remains, 1 lot of bone beads, 1 lot of stone beads, 1 lot of bag residue, and 1 lot of mammal remains. Although the exact site provenience is not known, it is believed that given the storage association with site 45FR40 and the history of excavations at other sites along the Lower Snake River during the 1950s through 1970s these items probably come from a burial site along the Lower Snake River.

The Lower Snake River region of southeastern WA is known to have included parts of the traditional territories of a number of Native American groups whose descendents now comprise members of the Confederated Tribes of the Colville Reservation, Washington; Nez Perce Tribe, Idaho; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon, Confederated Tribes and Bands of the Yakama Nation, Washington (hereinafter referred to as ''The Tribes''); and the Wanapum Band, a non-Federally recognized Indian group (hereinafter referred to as ''The Indian Group'').

Determinations Made by Washington State University, Department of Anthropology

Officials of WSU have determined that:

- Pursuant to 25 U.S.C. 3001(3)(B), the 93 items described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and is believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the unassociated funerary objects, The Tribes, and The Indian Group.

Additional Requestors and Disposition

Representatives of any other Indian tribe that believes itself to be culturally affiliated with the cultural items should contact Mary Collins, Director of the Museum of Anthropology at Washington State University, Pullman, WA 99163, (509) 335–4314, before December 29, 2011. Repatriation of the 93 unassociated funerary objects to The Tribes and The Indian Group may proceed after that date if no additional claimants come forward.

The Washington State University, Museum of Anthropology is responsible for notifying The Tribes and The Indian Group that this notice has been published.

Dated: November 22, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–30624 Filed 11–28–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

[2253–665]

National Park Service

Notice of Inventory Completion: Washington State University, Museum of Anthropology, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Washington State University, Museum of Anthropology (WSU) has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects may contact WSU. Repatriation of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact WSU at the address below by December 29, 2011.

ADDRESSES: Mary Collins, Director, Washington State University, Museum of Anthropology, Pullman, WA 99164–4910, telephone (509) 335–4314.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the Washington State University, Museum of Anthropology. The human remains and associated funerary objects were removed from Franklin County, WA, and an unknown location along the Lower Snake River.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains and funerary objects was made by the WSU professional staff in consultation with representatives of the Confederated Tribes of the Colville Reservation, Washington; Nez Perce Tribe, Idaho; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington (hereinafter referred to as ''The Tribes''); and the Wanapum Band, a non-Federally recognized Indian group (hereinafter referred to as ''The Indian Group'').

History and Description of the Remains

At some date between 1950 and 1970, human remains representing, at minimum, three individuals were removed from an unknown site in Franklin or Benton County, WA. The human remains were found among other archeological materials from sites excavated during this time period along the Lower Snake River. The remains, however, do not match any of the descriptions of excavated remains from any of the known sites. It is believed that these remains were excavated from one of several known burial sites along the Lower Snake River as archeologists at WSU were working at such sites between 1950 and 1970. The labels associated with the remains include burial numbers but not site numbers. No known individuals were identified. The 18 associated funerary objects are 1 projectile point, 3 lots of bag residue, 2 lots of plant remains, 3 lots of wood fragments, 1 lot of metal fragments, 1 lot of leather fragments, 1 lot of glass fragments, 2 lots of flakes, 1 lot of ceramic fragments, 2 lots of fabric fragments, and 1 lot of paper bags.

In 1958, human remains representing, at minimum, three individuals were removed from Site 45FR1 (also known

as 45FR42 or Fishhook Island) in Franklin County, WA by members of the Columbia Archaeological Society (CAS). Notes made by the CAS describe the burials as being of a late pre-contact age because of the lack of items of Euro-American manufacture among the associated funerary items. Correspondence between the CAS and Richard Daugherty, who was a member of the Anthropology faculty at WSU in 1958, discuss the possible deposition of the human remains and artifacts from these excavations at WSU but there is no record of such a deposit. The remains were found among a large set of remains known as the former ''WSU Teaching Collection'' which was used between 1968 and 1995. No known individuals were identified. No associated funerary objects are present.

Determinations Made by the Washington State University, Museum of Anthropology

Officials of WSU have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of six individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 18 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects, The Tribes, and The Indian Group.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact Mary Collins, Director, Washington State University, Museum of Anthropology, telephone (509) 335–4314, before December 29, 2011. Repatriation of the human remains and associated funerary objects to The Tribes and The Indian Group may proceed after that date if no additional claimants come forward.

Washington State University, Museum of Anthropology, is responsible for notifying The Tribes and The Indian Group that this notice has been published.

Dated: November 22, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–30625 Filed 11–28–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

[2253–665]

National Park Service

Notice of Inventory Completion: Tennessee Valley Authority and the University of Tennessee McClung Museum, Knoxville, TN

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Tennessee Valley Authority (TVA) and the University of Tennessee McClung Museum (McClung Museum) have completed an inventory of human remains in consultation with the appropriate Indian tribes, and have determined that there is a cultural affiliation between the human remains and present-day Indian tribes. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the TVA and McClung Museum. Repatriation of the human remains to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the TVA and McClung Museum at the address below by December 29, 2011.

ADDRESSES: Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT 11D, Knoxville, TN 37902–1401, telephone (865) 632–7458.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the custody of the McClung Museum and control of TVA, Knoxville, TN. The human remains were removed from the Toqua site (40MR6) and the Citico site (40MR7) in Monroe County, TN as a result of the construction of the Tellico Reservoir.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the TVA and McClung Museum professional staff in consultation with representatives of the Cherokee Nation, Oklahoma; Chickasaw Nation, Oklahoma; Eastern Band of Cherokee Indians of North Carolina; Eastern Shawnee Tribe of Oklahoma; Muscogee (Creek) Nation, Oklahoma; Thlopthlocco Tribal Town, Oklahoma; and the United Keetoowah Band of Cherokee Indians in Oklahoma.

History and Description of the Remains

In 1976, human remains representing a minimum of one individual were removed from the Toqua site (40MR6) in Monroe County, TN. The burial (#96) intruded from an upper, historic level into Mound A at the site. The remains have been curated at the McClung Museum since excavation. No known individuals were identified. No associated funerary objects are present.

Toqua was a known Overhill Cherokee village noted on the 1762 map made by Lt. Henry Timberlake after his visit to the lower Little Tennessee River. Both historical and archeological research indicate that a historic Cherokee occupation overlaps a prehistoric Native American occupation at this location. The stratigraphic location and orientation of these human remains resemble other historic Cherokee graves at the site.

In November 1967, human remains representing a minimum of one individual were removed from the Citico site (40MR7) in Monroe County, TN (burial #12). The remains have been curated at the McClung Museum since excavation. No known individuals were identified. Although excavation forms indicate that white tubular glass beads were associated with the burial, these objects are currently missing.

Citico was a known Overhill Cherokee village noted on the 1762 map made by Lt. Henry Timberlake after his visit to the lower Little Tennessee River. Both historical and archeological research indicate that a historic Cherokee occupation overlaps a prehistoric Native American occupation at this location. The location of these human remains and the documentary evidence of associated glass beads indicate that these were historic Cherokee graves.

Determinations Made by the TVA and McClung Museum

Officials of the TVA and McClung Museum have determined that:

• Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of two individuals of Native American ancestry.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains to the Cherokee Nation, Oklakoma; Eastern Band of Cherokee Indians of North Carolina; and the United Keetoowah Band of Cherokee Indians in Oklahoma (hereinafter referred to as ''The Tribes'').

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains should contact Dr. Thomas O. Maher, TVA, 400 West Summit Hill Drive, WT 11D, Knoxville, TN 37902–1401, telephone (865) 632–7458 before December 29, 2011. Repatriation of the human remains to The Tribes may proceed after that date if no additional claimants come forward.

The TVA is responsible for notifying The Tribes that this notice has been published.

Dated: November 22, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–30617 Filed 11–28–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: Paul H. Karshner Memorial Museum, Puyallup, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Paul H. Karshner Memorial Museum has completed an inventory of human remains in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the Paul H. Karshner Memorial Museum, Puyallup, WA. Disposition of the human remains to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the Paul H. Karshner Memorial Museum at the address below by December 29, 2011.

ADDRESSES: Brian Fox, Director of Instructional Leadership, Puyallup School District, Paul H. Karshner Memorial Museum, 302 2nd Street SE., Puyallup, WA, 98372, telephone (253) 841–8646.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains in the possession of the Paul H. Karshner Memorial Museum (Karshner Museum), Puyallup, WA. The human remains are reasonably believed to have been removed from either Washington State, Southeast Alaska, or Western Oregon.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Karshner Museum professional staff in consultation with representatives of the Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho; Confederated Tribes and Bands of the Yakama Nation, Washington; Confederated Tribes of the Chehalis Reservation, Washington; Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon; Confederated Tribes of the Grand Ronde Community of Oregon; Confederated Tribes of the Siletz Indians of Oregon; Confederated Tribes of the Umatilla Reservation, Oregon; Confederated Tribes of the Warm Springs Reservation of Oregon; Coquille Tribe of Oregon; Cow Creek Band of Umpqua Indians of Oregon; Cowlitz Indian Tribe, Washington; Hoh Indian Tribe of the Hoh Indian Reservation, Washington; Jamestown S'Klallam Tribe of Washington; Kalispel Indian Community of the Kalispel Reservation, Washington; Klamath Tribes, Oregon; Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington; Lummi Tribe of the Lummi Reservation, Washington; Makah Indian Tribe of the Makah Indian Reservation, Washington; Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington; Nez Perce Tribe of Idaho; Nisqually Indian Tribe of the Nisqually Reservation, Washington; Nooksack Indian Tribe of Washington; Port Gamble Indian Community of the Port Gamble Reservation, Washington; Puyallup Tribe of the Puyallup Reservation, Washington; Quileute Tribe of the Quileute Reservation, Washington; Quinault Tribe of the Quinault Reservation, Washington; Samish Indian Tribe, Washington; Sauk-Suiattle Indian Tribe of Washington; Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington; Skokomish Indian Tribe of the Skokomish Reservation, Washington; Snoqualmie Tribe, Washington; Spokane Tribe of the Spokane Reservation, Washington; Squaxin Island Tribe of the Squaxin Island Reservation, Washington; Stillaguamish Tribe of Washington; Suquamish Indian Tribe of the Port Madison Reservation, Washington; Swinomish Indians of the Swinomish Reservation, Washington; Tulalip Tribes of the Tulalip Reservation, Washington; and the Upper Skagit Indian Tribe of Washington (hereinafter referred to as ''The Tribes''). The Karshner Museum also consulted with the following non-Federally recognized Indian groups: The Aleut Corporation; Chinook Tribe; Duwamish Tribe; Kikiallus Nation; Marietta Band of Nooksack Indians; Sealaska Corporation; Snohomish Tribe; Snoqualmoo Tribe; Steilacoom Indian Tribe and the Wanapum Band (hereinafter referred to as ''The Indian Groups'').

History and Description of the Remains

Prior to 1924, human remains representing a minimum of three individuals were removed from an unknown location in either Washington State, Southeast Alaska, or Western Oregon. The remains were collected by the Karshner Museum's founder, Dr. Warner Karshner, and were apparently used as medical specimens. Dr. Karshner transferred the remains at an unknown date to his protégée Dr. Thomas H. Clark. Dr. Clark donated the remains to the Karshner Museum in 1982 (accession #1982.10; catalog number 1982.10.17–111). No known individuals were identified. No associated funerary objects are present.

The remains were identified at the Karshner Museum in December 2007. There is no provenience information for the remains; however, research by the Karshner Museum has resulted in a reasonable determination that the remains were collected from either Washington State; Southeast Alaska; or

Western Oregon. Dr. Karshner lived primarily in Puyallup, WA from 1905–1951 but was known to travel widely and collect items during his trips. Although he traveled throughout the United States and internationally, museum records indicate he only removed NAGPRA items from Washington State, Southeast Alaska, and Western Oregon.

The Karshner Museum received a formal joint claim for these remains from the Confederated Tribes of the Grand Ronde Community of Oregon; Puyallup Tribe of the Puyallup Reservation, Washington; and Samish Indian Tribe, Washington.

Determinations Made by the Paul H. Karshner Memorial Museum, Puyallup, WA

Officials of the Karshner Museum have determined that:

- Based on morphological characteristics identified during review by a physical anthropologist the human remains are Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- Multiple lines of evidence, including treaties, Acts of Congress, and Executive Orders, indicate that the land from which the Native American human remains were removed is the aboriginal land of the Confederated Tribes of the Grand Ronde Community of Oregon; Puyallup Tribe of the Puyallup Reservation, Washington; and the Samish Indian Tribe, Washington.
- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of three individuals of Native American ancestry.
- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to the Confederated Tribes of the Grand Ronde Community of Oregon; Puyallup Tribe of the Puyallup Reservation, Washington; and the Samish Indian Tribe, Washington.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Brian Fox, Director of Instructional Leadership, Paul H. Karshner Memorial Museum, Puyallup, WA, telephone (253) 841–8646, before December 29, 2011. Disposition of the human remains Confederated Tribes of the Grand Ronde Community of Oregon; Puyallup Tribe of the Puyallup Reservation, Washington; and Samish Indian Tribe, Washington may proceed after that date if no additional requestors come forward.

The Karshner Museum is responsible for notifying The Tribes and the Indian Groups that this notice has been published.

Dated: November 22, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–30615 Filed 11–28–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, Walla Walla, WA and the Washington State University, Museum of Anthropology, Pullman, WA

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Defense, Army Corps of Engineers, Walla Walla District, and the Washington State University Museum of Anthropology, have completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and have determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian tribes. Repatriation of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional claimants come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains and associated funerary objects should contact the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District at the address below by December 29, 2011.

ADDRESSES: LTC David Caldwell, U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, 201 North Third Ave., Walla Walla, WA 99362, telephone (509) 527–7700.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District (Corps), Walla Walla, WA, and in the physical custody of the Washington State University, Museum of Anthropology (WSU), Pullman, WA. The human remains and associated funerary objects were removed from Benton, Franklin, Garfield and Walla Walla Counties in Washington State.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Corps and WSU professional staff in consultation with representatives of the Confederated Tribes of Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; Nez Perce Tribe, Idaho; and the Wanapum Band, a non-Federally recognized Indian group.

History and Description of the Remains

Sites 45BN3, 45BN6, 45BN15, 45BN45 (aka 45BN186), 45BN55, 45BN161, 45FR5, and 45FR101 are located within the McNary Lock and Dam Project on the Columbia River, WA, which is managed by the Corps. The Corps initiated land acquisition processes for the McNary Lock and Dam Project in 1947. Sites 45WW48 and 45WW49 are located within the Ice Harbor Lock and Dam Project on the Lower Snake River, which is managed by the Corps. The Corps initiated land acquisition processes for the Project in 1955. Site 45GA12 is located within the Little Goose Lock and Dam Project on the Snake River, which is managed by the Corps. The Corps initiated land acquisition processes for the Project in 1963. Site 465GA40 is located within the Lower Granite Lock and Dam Project, which is managed by the Corps. The Corps initiated land acquisition processes for the Project in 1965.

Site 45BN3

In 1948, the Smithsonian Institution's River Basin Survey Project (SRBS) removed human remains and associated funerary objects from 45BN3, a pre-contact-protohistoric village site located on Berrian's Island, which is situated in the Columbia River, in Benton County, WA. SRBS transferred the human

remains and associated funerary objects to the Smithsonian Institution; the Oregon State Museum of Anthropology, Eugene, OR; and the University of Washington (UW) Burke Museum, Seattle, WA. The human remains and funerary objects in the custody of UW came from Burials 1 and 29. In 1996, at the Corps' request, UW transferred the human remains and associated funerary objects in its custody to WSU, which inventoried them in 2002. In 2007, the U.S. Department of Defense, Army Corps of Engineers, St. Louis District, Mandatory Center for Expertise for the Curation and Management of Archaeological Collections (MCX), conducted a second inventory of the human remains and associated funerary objects in the custody of WSU. This inventory identified the human remains from Burials 1 and 29 as belonging to two young adult males. No known individuals were identified. The three associated funerary objects are 1 bone whistle from Burial 1; and 2 lots of seed beads from Burial 29.

The estimated date range of the burials from 45BN3 is 1750–1811, based upon the presence at this site of Colonial uniform buttons whose earliest manufacture date is c.1750, and the absence of firearms, whose use by local tribes began c.1811. Further evidence supporting the date of these burials is the volume of trade goods observed in both the burials and in the village site. Distinctive morphological traits among the human remains, burial methods, and associated funerary objects, as well as evidence of contemporaneous mat lodge pots at the village site, all indicate Native American ancestry and funerary traditions reflective of Native groups of the Columbia Plateau. Other expert opinion evidence for determining cultural affiliation is the Smithsonian Institution's 2004 offer to return the remains of 33 individuals and 758 funerary objects from 45BN3 to the Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; and the Wanapum Band, a non-Federally recognized Indian group.

Site 45BN6

In 1950, human remains representing a minimum of one individual were removed by the SRBS from Site 45BN6, a pre-contact-protohistoric village site along the Columbia River, in Benton County, WA. The individual was removed from a test pit in a steep bank near the river's edge. Portions of the SRBS collection, including the remains of the individual, were transferred to the UW Burke Museum (accession #1966–87). In 1997, UW transferred human remains from 45BN6 to WSU, where they were inventoried in 2002. In 2006, during a second inventory of the remains, MCX determined that the remains of the individual belong to an adult of indeterminate sex. No known individuals were identified. No associated funerary objects are present.

Site 45BN6 was interpreted as a village occupied from the late 1700s to 1850, based on the minimal amount of trade items found in earlier deposits at the site, and the types of trade items found in the later deposits. This village was noted in the 1812 accounts of a non-Native explorer. Distinctive morphological traits indicate the individual is of Native American ancestry.

Site 45BN15

In 1947, 1951, and 1952, SRBS removed human remains and associated funerary objects from 27 burials at 45BN15, on Rabbit Island, which is situated in the Columbia River, in Benton County, WA. SRBS transferred the human remains and funerary objects to the Whitman Mission; Whitman College; the Smithsonian Institution; and the UW Burke Museum (accession #1966–87). In a 1995 inventory, UW reported the presence of human remains and associated funerary objects from 13 burials excavated at 45BN15 during the aforementioned SRBS investigations. UW transferred these human remains and associated funerary objects to WSU in 1997 and 2001. WSU re-inventoried the human remains and associated funerary objects from 45BN15 in 2002, and confirmed that the collections included items from the 1947, 1951, and 1952 SRBS investigations. In 2003, WSU indentified additional human remains from 45BN15 in a collection transferred to it from the University of Idaho (UI). In 2006, MCX performed an inventory of the human remains and associated funerary objects from 45BN15 at WSU and determined the minimum number of individuals to be 17. No known individuals were identified. The 102 associated funerary objects are 4 adze blades, 1 awl, 2 beaver incisors, 2 bone needles, 1 bone point, 1 bone toggle, 1 incised bird bone, 3 pieces of incised bone, 3 pestles, 3 polished bone items, 3 polished ground stone items, 43 projectile points, 1 shell pendant, 1 stone pendant, 1 stone pipe, 1 stone scraper, 3 lots of bag residue, 3 lots of bird remains, 2 lots of mammal remains, 2 lots of natural stone, 2 lots of ochre, 10 lots of shell beads, 1 lot of stone beads, and 8 lots of stone flakes.

The burials at Rabbit Island have been attributed to two distinct time periods based on burial traditions/methods. The later burials (Rabbit Island II) predate 1750 AD, and the earlier burials (Rabbit Island I) date to the Frenchman-Springs Phase (3500–1500 BP). Expert opinion evidence for determining cultural affiliation is the determination by Whitman Mission (in 1992) and Whitman College (in 2008) that the human remains and funerary objects from the site in their custody were culturally affiliated with the Confederated Tribes of the Umatilla Indian Reservation, Oregon, as well as the Smithsonian Institution's 2004 offer to return those human remains from the site in their possession to the Confederated Tribes of the Umatilla Indian Reservation, Oregon. Based on distinctive morphological traits and associated funerary objects that are consistent with Plateau burial traditions, all of the individuals have been determined to be Native American.

Site 45BN45

In 1948, human remains representing, at minimum, one individual, were removed from 45BN45 (aka 45BN186), located on an island in the Columbia River in Benton County, WA. The remains were housed at the UW Burke Museum, where they were inventoried in 1995. The collection was transferred to WSU in 1997 where, in 2002, it was again inventoried. The remains, belonging to a juvenile of indeterminate sex, exhibit extensive copper staining, which suggests that the burial originally included objects dating to the protohistoric period. No known individuals were identified. No associated funerary objects are present.

Site 45BN55

In 1949 and 1950, Thomas Garth excavated 10 burials and two cremation pit burials from 45BN55, a village site on Sheep Island in Benton County, WA. The human remains and funerary objects were subsequently transported to Whitman College. Sometime prior to 1959, the remains of three individuals were transferred from Whitman College to the UW Burke Museum for examination by Rodger Helgar. In 1950, the SRBS excavated remnants of the 1949 cremation pit burials and 17 additional burials from site 45BN55. The 1950 SRBS collection was transported to UW (accession #1966–87). UW's 1995 inventory reported the presence of human remains and funerary objects from both the 1949 Garth investigation (BA–BC) and the 1950 SRBS excavations (Burials 1–2, 4–17 and Cremation Pit #1–2). In 1997, at the request of the Corps, UW transferred this collection to WSU, which

conducted its own inventory in 2002. In 2006, the MCX reported that this collection comprises the human remains of, at minimum, 43 individuals. The 68 associated funerary objects are 2 beaver incisors, 1 bone needle, 2 carved antler items, 7 carved bone items, 1 incised bone item, 1 mortar, 3 pecked stone items, 2 pestles, 17 projectile points, 1 shell pendant, 1 stone bowl fragment, 1 stone core, 1 stone pipe, 2 stone scrapers, 1 lot of antler fragments, 1 lot of bag residue, 8 lots of mammal remains, 1 lot of natural stone, 1 lot of plant remains, 6 lots of shell beads, 6 lots of stone flakes, and 2 lots of wood fragments.

Two of the cremation burials identified at 45BN55 were located directly above several primary burials, suggesting two different periods of use. The burial methods and funerary objects such as dentalia and olivella shell, suggest inhumation in the late pre-contact period. The presence of cremation practices at 45BN55 may be evidence for a late pre-contact and early historic cremation complex in the southern Plateau. The human remains were analyzed by Rodger Helgar (UW) and were identified as Native American.

Site 45BN161

In 1968 and 1975, 18 burials were removed from 45BN161, on Bateman Island/Columbia Park Island in Benton County, WA, during salvage archeology efforts by UI and the Mid-Columbia Archaeological Society (MCAS). All human remains and some portion of the funerary objects from the site were reported to have been reburied at the West Richland Cemetery (also known as Wanawish Cemetery) in 1973, 1976, and 1982, by the Confederated Bands and Tribes of the Yakama Nation, Washington. An additional burial at 45BN161 (Burial 16) was identified in 1982, during testing by MCAS. The human remains from Burial 16, representing, at minimum, one individual were identified and inventoried by UI in 1995, and were transferred to WSU in 2001. The archeological data indicates a nearly continuous distribution of cultural material at 45BN161, spanning approximately 2,000 years. Most of the burials date to the late pre-contact-protohistoric occupation. Portions of the human remains were examined by physical anthropologist J. A. Lynch (UI) and were determined to be Native American.

Site 45FR5

In 1977 and 1999, human remains representing, at minimum, two individuals, were removed from 45FR5, a village site on Strawberry Island, which is situated in the Snake River, in Benton County, WA. On September 23, 1977, a Native American infant burial was removed from Unit D96 during excavations led by WSU and assisted by the MCAS. On August 29, 1999, human remains (a left tibia) representing one Native American adult male were inadvertently discovered at 45FR5. The remains were transferred to WSU and inventoried in 2003. The infant was reportedly reburied in 1982, at the Wanawish Cemetery, at the request of the Confederated Tribes and Bands of the Yakama Nation, Washington; however, a 2007 inventory by WSU and MCX indicate that human remains of an infant and a fragmentary human femur removed from Unit D96 are present in the 45FR5 collection. No known individuals were identified. No associated funerary objects are present.

Dated deposits at 45FR5 indicate the site was occupied as early as 600 AD, and during the precontact period, with a gap in occupation during c.700–1300 AD. Two dates were obtained for the infant burial (Unit D96): 1406–1486 AD and 1412–1499 AD. The human remains removed in 1999 were examined by a physical anthropologist and found to be consistent with those of a Native American individual. Traditionally, the confluence of the Snake and Columbia Rivers was utilized by many different groups, including the Yakama, Palus, Umatilla, Cayuse, and Walla Walla Tribes.

Site 45FR101

In 1967, human remains representing, at minimum, six individuals, were excavated from Site 45FR101, at Chiawana Park, in Benton County, WA. At this time an additional ten burials were excavated and individuals were reportedly reburied at Wanawish Cemetery in 1982. During the period 1990–2000, human remains and funerary objects from the excavations were transferred from UI and MCAS members to WSU. Inventories conducted by WSU resulted in the identification of human remains from the following Burials/Units: Burial 3; Burial 5 (Unit 039S); Units AA29S, A11S, 035S, 037S, 038S, P38S, Q38S, Q39S, S36S, T40S, U36S, U40S, Tr 5 S, and Tr 5 E. The MCX determined that these human remains represent, at minimum, five individuals: four adults and one sub-adult, 6–8 years of age. Subsequently, UI identified human remains from 45FR101 within its Human Osteology collection (labeled ''45FR101 1–39–5–5- 51''). UI transferred these remains to WSU in 2009, where a physical anthropologist determined they belonged to a single adult male of Native American ancestry. No known individuals were identified. The 32 associated funerary objects are: 2 stone rings, 2 shell pendants, 1 pestle, 1 bone needle, 10 bone whistles, 2 projectile points, 4 lots of stone flakes, 8 lots of shell beads, and 2 lots of stone beads.

Artifacts from 45FR101 have been stylistically dated to the Cayuse Phase (950–250 BP) and the earlier Frenchman Springs Phase, with one dating to the even earlier Lind Coulee Phase. Of the 16 burials removed from 45FR101, 11 were dated by the investigators to the pre-contact period. Aside from the six individuals in this notice, all of the human remains from this site were previously reinterred by the Corps in coordination with representatives from the Confederated Tribes of the Umatilla Indian Reservation, Oregon and the Confederated Tribes and Bands of the Yakama Nation, Washington.

Site 45GA12

In 1985, fragmentary human remains representing one individual were collected from the Steelman Site (45GA12) by Roderick Sprague of UI. The remains had been inadvertently exposed by power equipment working in the area of the site, located near Central Ferry. The remains were transferred from UI to WSU in 2000. No known individuals were identified. No associated funerary objects are present.

The site was originally recorded by Nelson (1964) and tested by Sprague and Combs (1965). It was described as a large, late pre-contact open camp site. Numerous floods had destroyed portions of the site. The majority of the site is now inundated.

Site 45GA40

In 1978, WSU performed an emergency burial recovery for the Corps at Site 45GA40, in Garfield County, WA, and removed fragmentary human remains representing, at minimum, one individual. The materials were inventoried by WSU in 1998. No known individuals were identified. The six associated funerary objects include: 1 lot of mammal remains, 3 lots of debitage, 1 lot of glass fragments, and 1 lot of bag residue.

Site 45GA40 was originally identified by WSU during an archeological site inventory of the Lower Granite Project in 1966. Its deposits indicate use from the Cascade Phase (6000–8000 years BP) to the late prehistoric periods.

Site 45WW48

In 1978, cranial remains representing, at minimum, one individual were

identified by a member of the public at site 45WW48, and were collected by the Walla Walla County Sherriff's Department and transferred to the Corps. The Corps subsequently transferred these remains to WSU for identification. Distinctive morphological characteristics indicate that the remains are Native American. No known individuals were identified. No associated funerary objects are present. Site 45WW48 is adjacent to a pre-contact village and burial site and is consistent with other pre-contact Snake River burial sites.

Site 45WW49

In 1976, the Corps collected human remains representing, at minimum, one individual from site 45WW49, near Charbonneau Park on the south shore of the Snake River. Distinctive morphological characteristics indicate that the remains are Native American. No known individuals were identified. No associated funerary objects are present.

Site 45WW49 lies within the boundaries of Site 45WW17, a pre-contact occupation site. The burial was found on a low sandy bench, above a river terrace habitation component. This arrangement is consistent with the Plateau pattern of pre-contact and historic Native American villages, whereby a burial ground is located close to and above the village, on a bluff or hill slope. Both sites are now inundated.

The relevant evidence supports a cultural affiliation between the Confederated Tribes of the Colville Reservation, Washington; Confederated Tribes of the Umatilla Indian Reservation, Oregon; Confederated Tribes of Warm Springs Reservation, Oregon; Confederated Tribes and Bands of the Yakama Nation, Washington; and the Nez Perce Tribe, Idaho (hereinafter referred to as ''The Tribes'') and the above-documented sites and collections. Additionally, a cultural relationship is determined to exist between the sites and collections and the Wanapum Band, a non-Federally recognized Indian group (hereinafter referred to as ''The Indian Group''). Information provided by The Tribes and The Indian Group shows that they are descended from the Native people who occupied these sites, and that the individuals buried along the Snake and mid-Columbia rivers are their ancestors. The aforementioned tribes are all part of the more broadly defined Plateau cultural community having shared past and present traditional lifeways that bind them to common ancestors.

Determinations Made by the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District

Officials of the U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, have determined that:

- Pursuant to 25 U.S.C. 3001(9)–(10) the human remains described above represent the physical remains of 77 individuals of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the 211 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects, The Tribes, and The Indian Group.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains and associated funerary objects should contact LTC David Caldwell, U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, 201 North Third Ave., Walla Walla, WA 99362, telephone (509) 527–7700, before December 29, 2011. Repatriation of the human remains and associated funerary objects to The Tribes and The Indian Group may proceed after that date if no additional claimants come forward.

The U.S. Department of Defense, Army Corps of Engineers, Walla Walla District, is responsible for notifying The Tribes and The Indian Group, that this notice has been published.

Dated: November 22, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–30613 Filed 11–28–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[2253–665]

Notice of Inventory Completion: University of Michigan Museum of Anthropology, Ann Arbor, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The University of Michigan has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian tribes, and has determined that there is no cultural affiliation between the remains and any present-day Indian tribe. Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains may contact the University of Michigan Office of the Vice President for Research. Disposition of the human remains and associated funerary objects to the Indian tribes stated below may occur if no additional requestors come forward.

DATES: Representatives of any Indian tribe that believes it has a cultural affiliation with the human remains should contact the University of Michigan Office of the Vice President for Research at the address below by December 29, 2011.

ADDRESSES: Dr. Ben Secunda, NAGPRA Project Manager, Office of the Vice President for Research, University of Michigan, 4080 Fleming Building, 503 Thompson Street, Ann Arbor, MI 48109–1340, telephone (734) 647–9085.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects in the possession of the University of Michigan. The human remains and associated funerary objects were removed from three sites in Mackinac County, MI.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3) and 43 CFR 10.11(d). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by University of Michigan officials and its Museum of Anthropology NAGPRA collections staff in consultation with representatives of the Bay Mills Indian Community, Michigan; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Potawatomi Indians of Michigan; Nottawaseppi

Huron Band of the Potawatomi, Michigan (formerly the Huron Potawatomi, Inc.); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Saginaw Chippewa Indian Tribe of Michigan; and the Sault Ste. Marie Tribe of Chippewa Indians of Michigan (hereinafter referred to as ''The Tribes'').

Additional requests for consultation were sent to the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Miami Tribe of Oklahoma; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Prairie Band of Potawatomi Nation, Kansas; Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of the Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation, Oklahoma.

History and Description of the Remains

In 1932, Robert Braidwood of the University of Michigan discovered human remains eroding from the surface while conducting an archeological survey of mounds comprising the Juntunen and Arrowhead Drive Sites in Mackinac County, MI. Between the initial 1932 discovery and 1960, human remains representing, at minimum, 76 individuals were excavated from the Juntunen Site. In 1959, Mr. Charles Juntunen, the landowner of the site, found the human remains while preparing a road using a bulldozer. Mr. Juntunen contacted the University of Michigan to salvage the remains, and Alan McPherron and James Griffin conducted multiple excavations. The Juntunen Site contains five ossuaries (one large and four small, both defined by secondary-burials), one infant burial, and additional human remains collected from the surface of a mound. The largest ossuary discovered at the site consisted of a lower burial pit (Feature 10) separated by a sterile layer of soil from an upper burial pit (Feature 11), both of which were lined with birch bark. At minimum, 33 individuals were found in this ossuary buried in bundles, with a high number of individuals exhibiting pathological expressions of tuberculosis in conjunction with chronic vitamin deficiencies. The four smaller ossuaries contained, at minimum, 32 individuals. Additionally, an infant burial was discovered in a pit that was covered by a collapsed log roof. Human remains were also recovered from the surface of the site representing, at minimum, 10 individuals. No known individuals were identified. There are 71 associated funerary objects including: 1 medicine bundle containing 2 stone points; 1 red ground stone or palette; 2 ground stones; 3 flint cores; 13 stone flakes; 3 bone chisels; 3 harpoon heads; 2 small bone awls; 2 large bone awls; 1 otter skull with soil; 1 lot consisting of a strike-a-light kit—iron pyrite, flint, and ''*skitaagin;*'' 1 copper awl; 1 bone punch or splinter with polished tips; 1 lot of twined textile fragments from the medicine bag; 2 miniature ceramic vessels; 29 shell and fish beads; 1 lot of approximately 700 Marginella shells that formed a shell beaded band or belt; and 3 lots of soil from the largest ossuary.

McPherron and Griffin noted a long history of occupation at the site. Archeological analysis suggests that the location was used as a large, seasonal fishing camp during the Late Woodland period. The burials were found to date between 1200–1400 A.D. based on ceramic typology and Carbon 14 analysis. The burial treatments found at the site and in the ossuaries are consistent with the time period.

In 1963, human remains representing, at minimum, seven individuals (1 elderly male, 3 adult females, 2 adult males, and 1 infant/neonate) were excavated from Arrowhead Drive Site by Charles Eyman of the University of Michigan. No known individuals were identified. The 20 associated funerary objects include: 1 medicine bundle containing 7 chert fragments; 1 animal bone lot with beaver incisors, black bear maxilla, bird and mammal bones; 8 stone fragments including specular hematite; 1 lot of the remains of a skin bag; 1 lot of shell and soil; 1 antler tool with a beaver incisor found near Burial 7; and 1 lot of ceramic sherds from two partial vessels.

This site is adjacent to the Juntunen Site; however, the mortuary treatment of the human remains buried at Arrowhead Drive show primary interment in the mound, whereas burials at the Juntunen site were interred in secondary bundles. Individuals at this site also show more cavities and tooth wear than those from the adjacent excavation. The burial feature at this site was found to date between 70 B.C.-170 A.D. based on Carbon 14 dating and diagnostic artifacts, falling within the Middle Woodland period and pre-dating the Juntunen Site by more than 1,000 years.

Sometime prior to 1924, human remains representing, at minimum one individual were removed from an unknown site in Saint Ignace, MI. The University of Michigan Museum of Anthropology purchased the human remains from Reverend L. P. Rowland in November of 1924 as part of a larger collection known as the ''Rowland Collection,'' which spans approximately 1,000 archeological and ethnographic objects from various locations in North America. No information on provenience is present except a reference to Saint Ignace, MI on the catalog card. Individual number 1276 was determined to be a middle aged adult 30–50 years of age, possibly female with cranial modifications from cradle boarding. No known individuals were identified. No funerary objects are present.

Determinations Made by the University of Michigan

Officials of the University of Michigan have determined that:

- Based on cranial morphology, dental traits, as well as the pottery and artifacts associated with the burials that all pre-date the contact period the human remains are determined to be Native American.
- Pursuant to 25 U.S.C. 3001(2), a relationship of shared group identity cannot be reasonably traced between the Native American human remains and any present-day Indian tribe.
- According to final judgments of the Indian Claims Commission, the land from which the Native American human remains and associated funerary objects, were removed is the aboriginal land of the Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad

River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Keweenaw Bay Indian Community, Michigan; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Ottawa Tribe of Oklahoma; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; and the White Earth Band of the Minnesota Chippewa Tribe, Minnesota.

- Multiple lines of evidence, including treaties, Acts of Congress, and Executive Orders, indicate that the land from which the Native American human remains and associated funerary objects were removed is the aboriginal land of the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (formerly the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band of Potawatomi Nation, Kansas; Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; Shawnee Tribe, Oklahoma; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota; White Earth Band of the Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation, Oklahoma.

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 84 individuals of Native American ancestry.

- Pursuant to 25 U.S.C. 3001(3)(A), the 91 objects described above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.

- Pursuant to 43 CFR 10.11(c)(1), the disposition of the human remains is to The Tribes.

Additional Requestors and Disposition

Representatives of any Indian tribe that believes itself to be culturally affiliated with the human remains or any other Indian tribe that believes it satisfies the criteria in 43 CFR 10.11(c)(1) should contact Dr. Ben Secunda, NAGPRA Project Manager, University of Michigan, Office of the Vice President for Research, 4080 Fleming Building, 503 Thompson St., Ann Arbor, Michigan 48109–1340, telephone (734) 647–9085, before December 29, 2011. Disposition of the human remains to The Tribes may proceed after that date if no additional requestors come forward.

The University of Michigan Office of the Vice President for Research is responsible for notifying the Absentee-Shawnee Tribe of Indians of Oklahoma; Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin; Bay Mills Indian Community, Michigan; Bois Forte Band (Nett Lake) of the Minnesota Chippewa Tribe, Minnesota; Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana; Citizen Potawatomi Nation, Oklahoma; Delaware Nation, Oklahoma; Delaware Tribe of Indians, Oklahoma; Eastern Shawnee Tribe of Oklahoma; Fond du Lac Band of the Minnesota Chippewa Tribe, Minnesota; Forest County Potawatomi Community, Wisconsin; Grand Portage Band of the Minnesota Chippewa Tribe, Minnesota; Grand Traverse Band of Ottawa and Chippewa Indians, Michigan; Hannahville Indian Community, Michigan; Keweenaw Bay Indian Community, Michigan; Kickapoo Traditional Tribe of Texas; Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas; Kickapoo Tribe of Oklahoma; Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin; Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin; Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan; Leech Lake Band of the Minnesota Chippewa Tribe, Minnesota; Little River Band of Ottawa Indians, Michigan; Little Traverse Bay Bands of Odawa Indians, Michigan; Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan; Miami Tribe of Oklahoma; Mille Lacs Band of the Minnesota Chippewa Tribe, Minnesota; Nottawaseppi Huron Band of the Potawatomi, Michigan (formerly the Huron Potawatomi, Inc.); Ottawa Tribe of Oklahoma; Peoria Tribe of Indians of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; Prairie Band of Potawatomi Nation, Kansas; Quechan Tribe of the Fort Yuma Indian Reservation, California and Arizona; Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin; Red Lake Band of Chippewa Indians, Minnesota; Saginaw Chippewa Indian Tribe of Michigan; Sault Ste. Marie Tribe of Chippewa Indians of Michigan; Shawnee Tribe, Oklahoma; Sokaogon Chippewa Community, Wisconsin; St. Croix Chippewa Indians of Wisconsin; Turtle Mountain Band of Chippewa Indians of North Dakota;

White Earth Band of the Minnesota Chippewa Tribe, Minnesota; and the Wyandotte Nation, Oklahoma that this notice has been published.

Dated: November 22, 2011.

Sherry Hutt,

Manager, National NAGPRA Program.

[FR Doc. 2011–30626 Filed 11–28–11; 8:45 am]

BILLING CODE 4312–50–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–1111–8856; 2200–3200–665]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before November 5, 2011. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service,1201 Eye St. NW., 8th floor, Washington DC 20005; or by fax, (202) 371–6447. Written or faxed comments should be submitted by December 14, 2011. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ALABAMA

Mobile County

Caldwell School, 351 Broad St., Mobile, 11000898

ARKANSAS

Union County

Mahony Historic District, Roughly bounded by Champagnolle Rd., Alley between N. Madison & Euclid Aves., Lee Ave. & E. 5th St., El Dorado, 11000899

COLORADO

Delta County

Hotchkiss Homestead, 422 Riverside Dr., Hotchkiss, 11000900

El Paso County

Fort Collins Municipal Railway No. 22, 2333 Steel Dr., Colorado Springs, 11000901

Grace and St. Stephen's Episcopal Church, 631 N. Tejon St., Colorado Springs, 11000902

Gilpin County

Russell Gulch I.O.O.F. Hall No. 47—Wagner and Askew, 81 Russell Gulch Rd., Russell Gulch, 11000903

FLORIDA

Lee County

'Tween Waters Inn Historic District, (Lee County MPS), 15951 Captiva Dr., Captiva, 11000904

Miami-Dade County

Collins Waterfront Architectural District, Bounded by 24th St., Atlantic Ocean, Indian Creek Dr., Pine Tree Dr. & Collins Canal, Miami Beach, 11000905

ILLINOIS

Champaign County

Wee Haven, 1509 W. Park Ave., Champaign, 11000906

Cook County

Chicago Sanitary and Ship Canal Historic District, (Illinois Waterway Navigation System Facilities MPS), Illinois Waterway mi. 290.0–321.7, Chicago, 11000907

INDIANA

Boone County

Cragun, Strange Nathanial, House, 404 W. Main St., Lebanon, 11000908

Hancock County

Greenfield Residential Historic District, Roughly bounded by Hendricks, South, & Wood Sts., & Boyd Ave., Greenfield, 11000909

Jackson County

Carr High School, (Indiana's Public Common and High Schools MPS), 10059 W. Cty. Rd. 250 S., Medora, 11000910

Jackson County Courthouse, 111 S. Main St., Brownstown, 11000911

Marion County

Archeological Sites 12Ma648 and 12Ma649, Address Restricted, Indianapolis, 11000912

Irvington Terrace Historic District, (Historic Residential Suburbs in the United States, 1830–1960 MPS), Roughly bounded by E. Washington St., Pleasant Run Pkwy., N. Arlington Ave., and E. side of N. Irwin St., Indianapolis, 11000913

Marshall County

Argos Izaak Walton League Historic District, 7184 E. 16th Rd., Argos, 11000914

Porter County

Read Dunes House, 1453 Tremont Rd., Chesterton, 11000915

Rush County

Indiana Soldiers' and Sailors' Children's Home, 10892 N. IN 140, Knightstown, 11000916

Shelby County

Shelby County Courthouse, 407 S. Harrison St., Shelby, 11000917

Wayne County

Richmond Downtown Historic District, Roughly Main St. between 7th & 10th Sts. & N. 8th St. between Main & A Sts., Richmond, 11000918

MARYLAND

Prince George's County

Piscataway Village Historic District, Bounded by Piscataway Cr., Piscataway Rd. & Livingston Rd., Clinton, 11000919

MASSACHUSETTS

Dukes County

Barn House, 451 South Rd., Chilmark, 11000920

PENNSYLVANIA

Allegheny County

Bell Telephone Company of Pennsylvania Western Headquarters Building, 201 Stanwix St., Pittsburgh, 11000921

Blair County

Keith, D.S., Junior High School, (Educational Resources of Pennsylvania MPS), 1318 19th Ave., Altoona, 11000922

Carbon County

Grotto, The—Our Lady of Lourdes Shrine, 15 E. Garibaldi Ave., Nesquehoning, 11000923

Chester County

Sharpless Homestead, 1045 Birmingham Rd. (Birmingham Township), West Chester, 11000924

Montgomery County

Green Hill Farms, 6 E. Lancaster Ave., Lower Merion, 11000925

Philadelphia County

Park Towne Place, 2200 Park Towne Place, Philadelphia, 11000926

TEXAS

Culberson County

Pratt, Wallace E., House, Pratt Dr. at McKittrick Rd., Salt Flat, 11000927

VERMONT

Chittenden County

Dumas Tenements, 114 W. Allen & 114 W. Canal Sts., Winooski, 11000928

WEST VIRGINIA

Hampshire County

South Branch Bridge, WV 259 N. of jct. Cty. Rd. 16, Capon Lake, 11000929

Mingo County

Williamson Field House, 1703 W. 3rd Ave., Williamson, 11000930

Putnam County

Winfield Toll Bridge, WV 34 mi. 21.34, Winfield, 11000931

A request for removal has been made for the following resources:

INDIANA

Floyd County

Sweet Gum Stable, 627 W. Main St., New Albany, 96000292

TENNESSEE

Greene County

Chuckey Depot, TN 2391, Chuckey, 79002432

[FR Doc. 2011–30623 Filed 11–28–11; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: The Water Resources Planning Act of 1965 and the Water Resources Development Act of 1974 require an annual determination of a discount rate for Federal water resources planning. The discount rate for Federal water resources planning for fiscal year 2012 is 4 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 2011, through and including September 30, 2012.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Water and Environmental Resources Division, Denver, Colorado 80225; telephone: (303) 445–2888.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 4 percent for fiscal year 2012.

This rate has been computed in accordance with Section 80(a), Public Law 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate will be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate will not be raised or lowered more than one-quarter of 1 percent for any year. The U.S. Department of the Treasury calculated the specified average to be 3.9560 percent. This average value is then rounded to the nearest one-eighth of a point, resulting in 4 percent.

The rate of 4 percent will be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs or otherwise converting benefits and costs to a common-time basis.

Dated: October 14, 2011.

Roseann Gonzales,

Director, Policy and Administration.

[FR Doc. 2011–30641 Filed 11–28–11; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Status Report of Water Service, Repayment, and Other Water-Related Contract Actions

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation and are new, modified, discontinued, or completed since the last publication of this notice on September 29, 2011. From the date of this publication, future notices during this calendar year will be limited to new, modified, discontinued, or completed contract actions. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Water and Environmental Resources Division, Bureau of Reclamation, P.O. Box 25007, Denver, Colorado 80225–0007; telephone (303) 445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the

Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his or her designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to, (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director will furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in This Document

ARRA—American Recovery and Reinvestment Act of 2009
BCP—Boulder Canyon Project
Reclamation—Bureau of Reclamation
CAP—Central Arizona Project
CVP—Central Valley Project
CRSP—Colorado River Storage Project
FR—**Federal Register**
IDD—Irrigation and Drainage District
ID—Irrigation District
LCWSP—Lower Colorado Water Supply Project
M&I—Municipal and Industrial
NMISC—New Mexico Interstate Stream Commission
O&M—Operation and Maintenance
P–SMBP—Pick-Sloan Missouri Basin Program
PPR—Present Perfected Right
RRA—Reclamation Reform Act of 1982
SOD—Safety of Dams
SRPA—Small Reclamation Projects Act of 1956
USACE—U.S. Army Corps of Engineers
WD—Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone (208) 378–5344.

New Contract Actions

20. Benton ID, Yakima Project, Washington: Amendatory contract to, among other things, withdraw the District from the Sunnyside Division Board of Control; provide for direct payment of the District's share of total operation, maintenance, repair, and replacement costs incurred by the United States in operation of storage division; and establish District responsibility for operation, maintenance, repair and replacement for irrigation distribution system.

21. Junction City Water Control District, Willamette River Basin Project, Oregon: Irrigation water service contract for approximately 8,000 acre-feet of Project water.

Completed Contract Actions

5. Palmer Creek Water District Improvement Company, Willamette River Basin Project, Oregon: Irrigation water service contract for approximately 13,000 acre-feet. Contract executed September 9, 2011.

11. State of Washington, Columbia Basin Project, Washington: Long-term contract for up to 25,000 acre-feet of project water to substitute for State-issued permits for M&I purposes with an additional 12,500 acre-feet of project water to be made available to benefit stream flows and fish in the Columbia River under this contract or a separate operating agreement. Contract executed August 2, 2011.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone (916) 978–5250.

New Contract Actions

55. Sacramento River Division, CVP, California: Administrative assignments of various Sacramento River Settlement Contracts.

56. Conaway Preservation Group, LLC, Sacramento River Division, CVP, California: Proposed assignment of 10,000 acre-feet of water under an existing Sacramento River Settlement Contract.

57. California Department of Fish and Game, CVP, California: To extend the term of and amend the existing water service contract for the Department's San Joaquin Fish Hatchery to allow an increase from 35 cubic feet per second to 60 cubic feet per second of continuous flow to pass through the Hatchery prior to it returning to the San Joaquin River.

Lower Colorado Region: Bureau of Reclamation, P.O. Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone (702) 293–8192.

New Contract Actions

19. Alderwoods (Arizona), Inc. and the City of Phoenix, CAP, Arizona: Proposed assignment of 84 acre-feet per year of CAP M&I water from Alderwoods (Arizona), Inc. to the City of Phoenix.

20. Fort McDowell Yavapai Nation and the Town of Gilbert, CAP, Arizona: Execute a Lease Amendment No. 1 to extend the 1-year lease that was executed December 14, 2010, for the delivery of up to 13,683 acre-feet of CAP water from the Nation to Gilbert, for another year.

Completed Contract Actions

4. White Mountain Apache Tribe, Miner Flat Project, Arizona: Execution of a contract to repay any amounts loaned to the Tribe pursuant to Section 3 of Pub. L. 110–390. Contract executed September 9, 2011.

15. Arizona Water Company (Superstition System), CAP, Arizona: Proposed transfer of Town of Superior's 285 acre-feet and proposed Amendment No. 1 to Arizona Water Company's subcontract to allow for the annual delivery of up to 6,285 acre-feet (6,000 acre-feet prior and 285 transferred) of CAP water for M&I purposes within its Superstition System. Contract executed September 12, 2011.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone (801) 524–3864.

The Upper Colorado Region has no updates to report for this quarter.

Great Plains Region: Bureau of Reclamation, P.O. Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59101, telephone (406) 247–7752.

New Contract Actions

52. City of Loveland, Colorado-Big Thompson Project, Colorado: Consideration of amendment to Contract No. 01WR6C0252, Article 5, regarding crediting excess capacity service charge.

53. Town of Berthoud, Colorado-Big Thompson Project, Colorado: Consideration of amendment to Contract No. 06XX6C0122, Article 5, regarding crediting of excess capacity service charge.

54. City of Rifle, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Consideration of a repayment contract for 200 acre-feet of water.

55. Huntley Project ID, Huntley Project, Montana: Consideration of a supplemental contract for repayment of extraordinary maintenance work on the main canal, in accordance with Section 9603 of Public Law 111–11.

Completed Contract Actions

31. Individual irrigators, Cambridge Unit, Frenchman-Cambridge Division, P–SMBP, Nebraska: Consideration of a request for a long-term excess capacity conveyance contract for transporting nonproject irrigation water. Contract executed September 22, 2011.

39. Frenchman-Cambridge ID, P–SMBP, Nebraska: Proposed contract for SOD repairs to Red Willow Dam. Contract executed September 14, 2011.

44. Frenchman-Cambridge ID, P–SMBP, Nebraska: Consideration of a request to amend the repayment contract to change the irrigation season start date from May 1 to April 15. Contract executed August 9, 2011.

51. Kensington Partners, Green Mountain Reservoir, Colorado-Big Thompson Project, Colorado: Consideration of an amendment to the existing contract to reduce the amount of water service by 225 acre-feet of municipal/domestic water and assign the water to the Upper Eagle Regional Water Authority. Contract executed September 2, 2011.

Modified Contract Action

46. Tom Green County Water Control and Improvement District No. 1, San Angelo Project, Texas: Consideration to amend Contract No. 14–06–500–369 to change the irrigation season definition to year-round usage and recognize agreements between the City of San Angelo and the District for putting treated wastewater to beneficial use in accordance with the State of Texas requirements for wastewater re-use.

Dated: October 18, 2011.

Roseann Gonzales,

Director, Policy and Administration.

[FR Doc. 2011–30645 Filed 11–28–11; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[DN 2859]

Certain Dynamic Random Access Memory Devices, and Products Containing Same; Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *In Re Certain Dynamic Random Access Memory Devices, and Products Containing Same,* DN 2859; the Commission is soliciting comments on any public interest issues raised by the complaint.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov,* and will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint filed on behalf of Nanya Technology Corporation on November 21, 2011. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain dynamic random access memory devices, and products containing same. The complaint names Elpida Memory Inc. of Japan; Elpida Memory (USA) Inc. of Sunnyvale, CA; and Kingston Technology Co., Inc. of Fountain Valley, CA, as respondents.

The complainant, proposed respondents, other interested parties, and members of the public are invited to file comments, not to exceed five pages in length, on any public interest issues raised by the complaint. Comments should address whether issuance of an exclusion order and/or a cease and desist order in this investigation would negatively affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) Explain how the articles potentially subject to the orders are used in the United States;

(ii) Identify any public health, safety, or welfare concerns in the United States relating to the potential orders;

(iii) Indicate the extent to which like or directly competitive articles are produced in the United States or are otherwise available in the United States, with respect to the articles potentially subject to the orders; and

(iv) Indicate whether Complainant, Complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to an exclusion order and a cease and desist order within a commercially reasonable time.

Written submissions must be filed no later than by close of business, five business days after the date of publication of this notice in the **Federal Register.** There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation.

Persons filing written submissions must file the original document and 12 true copies thereof on or before the deadlines stated above with the Office of the Secretary. Submissions should refer to the docket number (''Docket No. 2859'') in a prominent place on the cover page and/or the first page. The Commission's rules authorize filing submissions with the Secretary by facsimile or electronic means only to the extent permitted by section 201.8 of the rules (see Handbook for Electronic Filing Procedures, *http://www.usitc.gov/secretary/fed_reg_notices/rules/documents/handbook_on_electronic_filing.pdf*. Persons with questions regarding electronic filing should contact the Secretary (202) 205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of sections 201.10 and 210.50(a)(4) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.50(a)(4)).

By order of the Commission.

Issued: November 21, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–30567 Filed 11–28–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–724]

Investigations: Terminations, Modifications and Rulings: Certain Electronic Devices With Image Processing Systems, Components Thereof, and Associated Software

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined that no violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) has been shown in the above-captioned investigation and that the investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Clark S. Cheney, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2661. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on May 19, 2010, based on a complaint filed by S3 Graphics Co. Ltd. and S3 Graphics Inc. (collectively, ''S3G''). 75 FR 38118 (July 1, 2010). The complaint alleged violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) by reason of infringement of various claims of United States Patent Nos. 6,658,146 (''the '146 patent''); 6,683,978 (''the '978 patent''); 6,775,417 (''the '417 patent''); and 7,043,087 (''the '087 patent''). The complaint named Apple Inc. of Cupertino, California (''Apple'') as the only respondent.

On July 1, 2011, the ALJ issued a final ID in this investigation finding that Apple violated section 337. Specifically, the ALJ found that Apple computers utilizing an image compression format called DXT infringe claim 11 of the '978 patent and claims 4 and 16 of the '146 patent. The ALJ recommended that the Commission issue a limited exclusion order and a cease and desist order. The ALJ found no violation with respect to the other asserted claims, which are claim 13 of the '146 patent, claims 14 and 16 of the '978 patent, claims 7, 12, 15, and 23 of the '417 patent, and claims 1 and 6 of the '087 patent. On September 2, 2011, the Commission determined to review the ID in its entirety.

On September 15, 2011, non-parties Advanced Micro Devices, Inc. (''AMD'') and its subsidiaries ATI Technologies ULC and ATI International SRL filed a motion to intervene and terminate the investigation based on a claim that AMD owns the patents at issue and declines to assert them in this investigation. On September 19, 2011, respondent Apple filed its own motion to terminate based on AMD's patent ownership claims. Subsequently, the Commission determined to extend the target date for completion of the investigation until November 21, 2011.

Having examined the record of this investigation, including the ALJ's final ID and the submissions of the parties and non-parties, the Commission has determined to reverse the ALJ's finding of a violation of section 337 and find no violation. Additionally, the Commission has determined to deny AMD's motion to file public interest comments out of time, to grant AMD's motion to file a reply in connection with its motion to intervene and terminate, to deny AMD's motion to intervene and terminate, and to deny Apple's motion to terminate.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: November 21, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–30566 Filed 11–28–11; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–816]

Certain Wiper Blades; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 26, 2011, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Robert Bosch LLC of Farmington Hills, Michigan. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain wiper blades by reason of infringement of certain claims of U.S. Patent No. 6,523,218 (''the '218 patent''); U.S. Patent No. 6,553,607 (''the '607 patent''); U.S. Patent No. 6,611,988 (''the '988 patent''); U.S. Patent No. 6,675,434 (''the '434 patent''); U.S. Patent No. 6,836,926 (''the '926 patent''); U.S. Patent No. 6,944,905 (''the '905 patent''); U.S. Patent No. 6,973,698 (''the '698 patent''); U.S. Patent No. 7,293,321 (''the '321 patent''); and U.S. Patent No. 7,523,520 (''the '520 patent''). The complaint further alleges that an industry in the United States exists as required by subsections (a)(2) and (3) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue an exclusion order and cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov*.

FOR FURTHER INFORMATION CONTACT: The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2011).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on November 21, 2011, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain wiper blades that infringe one or more of claims 1–3, 5–7, and 10 of the '218 patent; claims 1–12 and 14 of the '607 patent; claims 1–6, 8–12, and 15 of the '988 patent; claims 1, 5, 7, and 13 of the '434 patent; claims 1–3 of the '926 patent; claims 1, 3, 4, 8, 10, 11, 13, and 15–18 of the '905 patent; claim 1 of the '698 patent; claims 1–5, 9, and 10 of the '321 patent; and claims 1–5, 9, 10, 18, and 19 of the '520 patent; and whether an industry in the United States exists as required by subsections (a)(2) and (3) of section 337;

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is:

Robert Bosch LLC, 38000 Hills Tech Drive, Farmington Hills, MI 48331.

(b) The respondent is the following entity alleged to be in violation of section 337, and is the party upon which the complaint is to be served:

ADM21 Co., Ltd., 742–6 Wonsi-dong, Danwon-gu, Ansan-si, Gyeonggi-do, Korea, 425–090;

ADM21 Co. (North America) Ltd., 333 Sylvan Avenue, Suite 106, Englewood Cliffs, NJ 07632;

Alberee Products, Inc., d/b/a Saver Automotive Products, Inc., 510 E. Preston Street, Baltimore, MD 21202;

API Korea Co., Ltd., 45B–4L, #435–3, Nonhyeon-Dong, NamDong-Gu Incheon, Korea, 405–848;

Cequent Consumer Products, Inc., 29000–2 Aurora Rd., Solon, OH 44139;

Corea Autoparts Producing Corporation, d/b/a CAP America, 800, Oidap-Dong, Sangju-City, Gyeongsangbuk-do, South Korea, 742–320;

Danyang UPC Auto Parts Co., Ltd., Dachengqiao Industrial Park, Jiepai Town, Danyang City, Jiangsu, China, 212323;

Fu-Gang Co., Ltd., No. 65, Ligong 2nd Rd., Wujie Township, Yilan County 268, Taiwan;

PIAA Corporation USA, 3004 NE. 181st Avenue, Portland, OR 97230;

Pylon Manufacturing Corp., 1341 W. Newport Center Drive, Deerfield Beach, FL 33442;

RainEater, LLC, 2800 W. 21st St., Erie, PA 16506;

Scan Top Enterprise Co., Ltd., RM. 4E–17, No. 5, Sec. 5, Hsin Yi Road, Taipei 110, Taiwan R.O.C.;

Winplus North America Inc., 820 South Wanamaker Ave., Ontario, CA 91761.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., Suite 401, Washington, DC 20436; and

(3) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d)–(e) and 210.13(a), such responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: November 21, 2011.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–30568 Filed 11–28–11; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated July 11, 2011, and published in the **Federal Register** on July 19, 2011, 76 FR 42732, United States Pharmacopeial Convention, 12601 Twinbrook Parkway, Rockville, Maryland 20852, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as an importer of the following basic classes of controlled substances:

Drug	Schedule
Cathinone (1235)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
4-Methyl-2,5-dimethoxyamphetamine (7395).	I
3,4-Methylenedioxyamphetamine (7400).	I
Codeine-N-oxide (9053)	I
Heroin (9200)	I
Morphine-N-oxide (9307)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenmetrazine (1631)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
Glutethimide (2550)	II
Phencyclidine (7471)	II
4-Anilino-N-phenethyl-4-piperidine. (8333)	II
Phenylacetone (8501)	II
Alphaprodine (9010)	II
Anileridine (9020)	II
Cocaine (9041)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Diphenoxylate (9170)	II
Hydrocodone (9193)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Methadone (9250)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Alfentanil (9737)	II
Sufentanil (9740)	II

The company plans to import reference standards for sale to researchers and analytical labs.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and 952(a) and determined that the registration of United States Pharmacopeial Convention to import the basic classes of controlled substances is consistent

with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. DEA has investigated United States Pharmacopeial Convention to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above named company is granted registration as an importer of the basic classes of controlled substances listed.

Dated: November 21, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–30687 Filed 11–28–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on July 22, 2011, Noramco Inc., 1440 Olympic Drive, Athens, Georgia 30601, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Codeine-N-oxide (9053)	I
Dihydromorphine (9145)	I
Morphine-N-oxide (9307)	I
Amphetamine (1100)	II
Methylphenidate (1724)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Sufentanil (9740)	II
Carfentanil (9743)	II
Tapentadol (9780)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, Federal Register Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 30, 2012.

Dated: November 21, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–30685 Filed 11–28–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a), Title 21 of the Code of Federal Regulations (CFR), this is notice that on August 9, 2011, Johnson Matthey, Inc., Pharmaceuticals Materials, 900 River Road, Conshohocken, Pennsylvania 19428, made application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Diphenoxylate (9170)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone Intermediate (9254)	II

The company plans to manufacture the listed controlled substances in bulk for distribution and sale to its customers.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the proposed registration pursuant to 21 CFR 1301.33(a).

Any such written comments or objections should be addressed, in quintuplicate, to the Drug Enforcement Administration, Office of Diversion Control, **Federal Register** Representative (ODL), 8701 Morrissette Drive, Springfield, Virginia 22152; and must be filed no later than January 30, 2012.

Dated: November 21, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–30689 Filed 11–28–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 23, 2011, and published in the **Federal Register** on July 5, 2011, 76 FR 39126, Chemtos, LLC, 14101 W. Highway 290, Building 2000B, Austin, Texas 78737, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Nabilone (7379)	II
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Etorphine HCL (9059)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Ecgonine (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Meperidine-intermediate-A (9232)	II
Meperidine-intermediate-B (9233)	II
Meperidine-intermediate-C (9234)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Thebaine (9333)	II
Dihydroetorphine (9334)	II
Levo-alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Racemethorphan (9732)	II
Racemorphan (9733)	II

The company plans to manufacture small quantities of the listed controlled substances in bulk for distribution to its customers for use as reference standards.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Chemtos, LLC, to manufacture the listed basic classes of controlled substances is consistent with the public interest at

this time. DEA has investigated Chemtos, LLC, to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: November 21, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–30690 Filed 11–28–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated June 7, 2011, and published in the **Federal Register** on June 16, 2011, 76 FR 35242, Chattem Chemicals Inc., 3801 St. Elmo Avenue, Building 18, Chattanooga, Tennessee 37409, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the following basic classes of controlled substances:

Drug	Schedule
4–Methoxyamphetamine (7411)	I
Dihydromorphine (9145)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Lisdexamfetamine (1205)	II
Methylphenidate (1724)	II
Pentobarbital (2270)	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Hydrocodone (9193)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Morphine (9300)	II
Oripavine (9330)	II
Thebaine (9333)	II
Oxymorphone (9652)	II
Noroxymorphone (9668)	II
Alfentanil (9737)	II
Remifentanil (9739)	II
Sufentanil (9740)	II
Fentanyl (9801)	II

The company plans to manufacture the listed controlled substances in bulk for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Chattem Chemicals Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Chattem Chemicals Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: November 21, 2011.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 2011–30695 Filed 11–28–11; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Proposed Information Collection Request Submitted for Sixty Days' Public Comment; O*NET Data Collection Program, Extension of Currently Approved Collection Without Change

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the O*NET (Occupational Information Network) Data Collection Program. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice or by accessing: *http://www.onetcenter.org/ombclearance.html*

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before January 30, 2012.

ADDRESSES: Send comments to the Employment and Training Administration, 200 Constitution Avenue NW., Room C4526, Washington, DC 20210, *Attention:* Pam Frugoli. *Fax:* (202) 693–3015 (this is not a toll-free number). *Email: o-net@doleta.gov*.

FOR FURTHER INFORMATION CONTACT: Lauren Wright, Telephone number (202) 693–3045 (this is not a toll-free number), *Email: wright.lauren@dol.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The O*NET Data Collection Program is an ongoing effort to collect and maintain current information on the detailed characteristics of occupations and skills for more than 900 occupations. The resulting database provides the most comprehensive standardized source of occupational and skills information in the nation. O*NET information is used by a wide range of audiences, including individuals making career decisions, public agencies and schools providing career exploration services or education and training programs, and businesses making staffing and training decisions. The O*NET system provides a common language, framework and database to meet the administrative needs of various federal programs, including workforce investment and training programs supported by funding from the Departments of Labor, Education, and Health and Human Services.

Section 309 of the Workforce Investment Act requires the Secretary of Labor to oversee the ''development, maintenance, and continuous improvement of a nationwide employment statistics system'' which shall include, among other components, ''skill trends by occupation and industry.'' The O*NET database provides:

- Detailed information for more than 900 occupations.
- Descriptive information using standardized descriptors for skills, abilities, interests, knowledge, work values, education, training, work context, and work activities.

• Occupational coding based on the 2010 Standard Occupational Classification (SOC) system.

The O*NET electronic database and related O*NET products and tools have been incorporated into numerous public and private sector products and resources, summarized at *http://www.onetcenter.org/paw.html.* These products in turn serve millions of customers.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: O*NET Data Collection Program.

OMB Number: 1205–0421.

Affected Public: Business/Employers (includes private and not-for-profit businesses and government); individuals (incumbent workers, subject-matter experts).

Form: O*NET Data Collection Program.

Total Annual Respondents: 26288.

Frequency: annual.

Total Annual Responses: 26288.

Average Time per Response: Employer response time is 70 minutes. Incumbent worker response time is 30 minutes. Subject-matter expert response time is 90 minutes.

Estimated Total Annual Burden Hours: 13,670.

Total Annual Burden Cost: $536,820.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed: at Washington, DC, this 16th day of November, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–30585 Filed 11–28–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Vertical Tandem Lifts for Marine Terminals

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Vertical Tandem Lifts for Marine Terminals,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before December 29, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov*.

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Occupational Safety and Health Administration (OSHA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* (202) 395–6929/*Fax:* (202) 395–6881 (these are not toll-free numbers), *email: OIRA_submission@omb.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov*.

SUPPLEMENTARY INFORMATION: The Vertical Tandem Lifts (VTLs) standards of regulations 29 CFR part 1917 require employers to develop, implement, and maintain a written plan for transporting vertically connected containers in the longshoring and marine terminal industries. The written plan is necessary for the safe transport of VTLs in the marine terminal where factors affect the stability of a VTL that has a higher center of gravity than a single container.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1218–0260. The current OMB approval is scheduled to expire on November 30, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on July 12, 2011 (76 FR 40935).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1218–0260. The OMB is particularly interested in comments that:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title of Collection: Vertical Tandem Lifts for Marine Terminals.

OMB Control Number: 1218–0260.

Affected Public: Private Sector—Businesses or other for-profits.

Total Estimated Number of Respondents: 510.

Total Estimated Number of Responses: 510.

Total Estimated Annual Burden Hours: 2000.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 22, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–30619 Filed 11–28–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Requirements of a Bona Fide Thrift or Savings Plan and Requirements of a Bona Fide Profit-Sharing Plan or Trust

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Wage and Hour Division (WHD) sponsored information collection request (ICR) titled, ''Requirements of a Bona Fide Thrift or Savings Plan and Requirements of a Bona Fide Profit-Sharing Plan or Trust,'' to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501 et seq.).

DATES: Submit comments on or before December 29, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Department of Labor, Wage and Hour Division (WHD), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* (202) 395–6929/*Fax:* (202) 395–6881 (these are not toll-free numbers), *email: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This information collection applies to employers claiming the overtime exemption available under Fair Labor Standards Act section 7(e)(3)(b). Specifically, in calculating an employee's regular rate of pay, an employer need not include contributions made to a bona fide thrift or savings plan or a bona fide profit-sharing plan or trust—as defined in 29 CFR parts 547 and 549. Employers are required to communicate, or make available to the employees, the terms of the bona fide thrift or savings plan and bona fide profit-sharing plan or trust, and retain certain records.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1235–0013. The current OMB approval is scheduled to expire on November 30, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional information, see the related notice published in the **Federal Register** on May 16, 2011 (76 FR 28242).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should reference OMB Control Number 1235–0013. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Wage and Hour Division (WHD).

Title of Collection: Requirements of a Bona Fide Thrift or Savings Plan and Requirements of a Bona Fide Profit-Sharing Plan or Trust.

OMB Control Number: 1235–0013.

Affected Public: Private Sector—Businesses or other for profits, Farms, and Not-for-profit institutions.

Total Estimated Number of Respondents: 1,034,112.

Total Estimated Number of Responses: 589,444.

Total Estimated Annual Burden Hours: 328.

Total Estimated Annual Other Costs Burden: $0.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–30686 Filed 11–28–11; 8:45 am]

BILLING CODE 7510–13–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Work Opportunity Tax Credit and Welfare-to-Work Tax Credit

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employment and Training Administration (ETA) sponsored information collection request (ICR) titled, ''Work Opportunity Tax Credit and Welfare-to-Work Tax Credit,'' as proposed to be revised to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork

Reduction Act (PRA) of 1995 (44 U.S.C. 3501 *et seq.*).

DATES: Submit comments on or before December 29, 2011.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the *RegInfo.gov* Web site, *http://www.reginfo.gov/public/do/PRAMain,* on the day following publication of this notice or by contacting Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request to the Office of Information and Regulatory Affairs, *Attn:* OMB Desk Officer for the Department of Labor, Employment and Training Administration (ETA), Office of Management and Budget, Room 10235, Washington, DC 20503, *Telephone:* (202) 395–6929/*Fax:* (202) 395–6881 (these are not toll-free numbers), *email: OIRA_submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at (202) 693–4129 (this is not a toll-free number) or by email at *DOL_PRA_PUBLIC@dol.gov.*

SUPPLEMENTARY INFORMATION: This ICR is for the Tax Credit Program administration. Data and information provided under this ICR is used for program planning, evaluation of Program performance and outcomes through states' quarterly report and for oversight/verification activities as mandated by the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) section 11405(c), which indefinitely extended the $5 million set-aside for testing whether individuals certified as members of Work Opportunity Tax Credit targeted groups are eligible for certification.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information if the collection of information does not display a valid OMB Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under OMB Control Number 1205–0371. The current OMB approval is scheduled to expire on November 30, 2011; however, it should be noted that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New information collection requirements would take effect only after OMB approval. For additional information, see the related notice published in the **Federal Register** on September 9, 2011 (76 FR 55946).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register.** In order to help ensure appropriate consideration, comments should reference OMB Control Number 1205–0371. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration (ETA).

Title of Collection: Work Opportunity Tax Credit and Welfare-to-Work Tax Credit.

OMB Control Number: 1205–0371.

Affected Public: Individuals or Households; Private Sector—Businesses or other for profits and not-for-profit institutions; and State, Local, and Tribal Governments.

Total Estimated Number of Respondents: 990,052.

Total Estimated Number of Responses: 2,420,612.

Total Estimated Annual Burden Hours: 847,909.

Total Estimated Annual Other Costs Burden: $0.

Dated: November 22, 2011.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2011–30655 Filed 11–28–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–74,593]

Whirlpool Corporation, Including On-Site Leased Workers From Career Solutions TEC Staffing, Andrews International, IBM Corporation, TEK Systems Penske Logistics, Eurest, Canteen, Kelly Services, Inc., Prodriver, and Arkansas Warehouse, Inc., Fort Smith, AR; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 6, 2010, applicable to workers of Whirlpool Corporation, including on-site leased workers from Career Solutions TEC Staffing, Fort Smith, Arkansas. The workers are engaged in the production of refrigerators and trash compactors. The notice was published in the **Federal Register** on October 25, 2010 (75 FR 65520). The notice was amended on December 6, 2010 to include on-site leased workers from Andrews International. The notice was published in the **Federal Register** on December 13, 2010 (75 FR 77665). The notice was amended on November 7, 2011 to include several on-site leased worker firms. The notice will be published soon in the **Federal Register**.

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The company reports that workers leased from Kelly Services, Inc., Prodriver, and Arkansas Warehouse, Inc. were employed on-site at the Fort Smith, Arkansas location of Whirlpool Corporation. The Department has determined that these workers were sufficiently under the control of Whirlpool Corporation to be considered leased workers.

Based on these findings, the Department is amending this certification to include workers leased from Kelly Services, Inc., Prodriver, and Arkansas Warehouse, Inc. working on-site at the Fort Smith, Arkansas location of Whirlpool Corporation.

The amended notice applicable to TA–W–74,593 is hereby issued as follows:

All workers of Whirlpool Corporation, including on-site leased workers from Career Solutions TEC Staffing, Andrews International, IBM Corporation, TEK Systems, Penske Logistics, Eurest, Canteen, Kelly Services, Inc., Prodriver, and Arkansas Warehouse, Inc., Fort Smith, Arkansas, who became totally or partially separated from employment on or after October 2, 2010, through October 6, 2012, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 18th day of November 2011.

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–30656 Filed 11–28–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–80,472]

Tiger Drylac USA, Inc., Including On-Site Leased Workers From Berks and Beyond Employment Services, Gage Personnel and Office Team/Robert Half International, Reading, Pennsylvania; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on October 19, 2011, applicable to workers of Tiger Drylac USA, Inc., Reading, Pennsylvania. The workers are engaged in activities related to providing administrative services in support of production of powder coatings. Specifically, the workers provided customer service, IT, and lab services. The notice was published in the **Federal Register** on November 3, 2011 (76 FR 68220).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information shows that workers leased from Berks and Beyond Employment Services, Gage Personnel, and Office Team/Robert Half International were employed on-site at the Reading, Pennsylvania location of Tiger Drylac USA, Inc. The Department has determined that these workers were sufficiently under the control of Tiger Drylac USA, Inc. to be considered leased workers.

The intent of the Department's certification is to include all workers of the subject firm adversely affected by a shift in the production of powder coatings to Mexico.

Based on these findings, the Department is amending this certification to include workers leased from Berks and Beyond Employment Services, Gage Personnel, and Office Team/Robert Half International working on-site at the Reading, Pennsylvania location of the subject firm.

The amended notice applicable to TA–W–80,472 is hereby issued as follows:

All workers of Tiger Drylac USA, Inc., including on-site leased workers from Berks and Beyond Employment Services, Gage Personnel, and Office Team/Robert Half International, Reading, Pennsylvania, who became totally or partially separated from employment on or after September 26, 2010, through October 19, 2013, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC this 18th day of November 2011

Michael W. Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2011–30657 Filed 11–28–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for New York and Maryland

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces a change in benefit period eligibility under the EB program for New York and Maryland.

The following changes have occurred since the publication of the last notice regarding the States EB status:

• Based on the data released by the Bureau of Labor Statistics on September 16, 2011, the seasonally-adjusted total unemployment rate for New York rose to meet the 8.0% threshold to trigger ''on'' to a high unemployment period (HUP) in EB. The payable period for New York in HUP began October 10 and eligibility for claimants has been increased from a maximum potential duration of 13 weeks to a maximum potential duration of 20 weeks in the EB program.

• Maryland enacted a retroactive TUR trigger and a three year look-back for the EB program, which became effective October 1, 2011. This trigger is retroactive to January 2, 2010, and anyone exhausting EUC benefits since that point is potentially eligible for benefits. The payable period in Maryland for these benefits began October 2.

The trigger notice covering state eligibility for the EB program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.*

Information for Claimants

The duration of benefits payable in the EB program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the states by the U.S. Department of Labor. In the case of a state beginning an EB period, the State Workforce Agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 615.13 (c) (1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4524, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by email: *gibbons.scott@dol.gov*.

Signed in Washington, DC, this 16th day of November, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–30584 Filed 11–28–11; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of the Payable Periods in the Emergency Unemployment Compensation 2008 (EUC08) Program for Indiana, the Virgin Islands, West Virginia, and Wyoming

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Announcement regarding Notice of a Change in Status of the payable periods in the Emergency Unemployment Compensation 2008 (EUC08) program for Indiana, the Virgin Islands, West Virginia, and Wyoming.

Public law 111–312 extended provisions in public law 111–92 which amended prior laws to create a Third and Fourth Tier of benefits within the EUC08 program for qualified unemployed workers claiming benefits in high unemployment states. The Department of Labor produces a trigger notice indicating which states qualify for EUC08 benefits within Tiers Three and Four and provides the beginning and ending dates of payable periods for each qualifying state. The trigger notice covering state eligibility for the EUC08 program can be found at: *http://ows.doleta.gov/unemploy/claims_arch.asp.*

- Based on data released by the Bureau of Labor Statistics on September 16, 2011, the three month average, seasonally adjusted total unemployment rate for Indiana rose to meet the 8.5% threshold to trigger ''on'' in Tier Four of the EUC08 program. The payable period for Indiana in Tier Four of EUC began October 9.
- Based on data released by the Bureau of Labor Statistics on October 7, 2011, the estimated three month average, seasonally adjusted total unemployment rate for the Virgin Islands rose to exceed the 8.5% threshold to trigger ''on'' in Tier Four of the EUC08 program. The payable period for the Virgin Islands in Tier Four of EUC began October 23. As a result, the maximum potential duration of 47 weeks will increase to a maximum potential duration of 53 weeks in the EUC08 program.
- Based on data released by the Bureau of Labor Statistics on August 19, the three month average, seasonally adjusted total unemployment rate for West Virginia fell below the 8.5% threshold to remain ''on'' in Tier Four of the EUC08 program. The week ending September 10, 2011 was the last week in which EUC claimants in West Virginia could exhaust Tier 3, and establish Tier Four eligibility. Under the phase-out provisions, claimants who were in Tier Four can receive any remaining entitlement they have in Tier Four after September 10, 2011; for all other claimants the maximum potential duration is 47 weeks in the EUC08 program.
- Based on data released by the Bureau of Labor Statistics on August 19, the three month average, seasonally adjusted total unemployment rate for Wyoming fell below the 6.0% threshold to remain ''on'' in Tier Three of the EUC08 program. The week ending September 10, 2011 was the last week in which EUC claimants in Wyoming could exhaust Tier Two, and establish Tier Three eligibility. Under the phase-out provisions, claimants who were in Tier Three can receive any remaining entitlement they had in Tier Three after September 10, 2011; for all other claimants the maximum potential duration is 34 weeks in the EUC08 program.

Information for Claimants

The duration of benefits payable in the EUC program, and the terms and conditions under which they are payable, are governed by Public Laws 110–252, 110–449, 111–5, 111–92, 111–118, 111–144, 111–157, 111–205 and 111–312, and the operating instructions issued to the states by the U.S. Department of Labor. Persons who believe they may be entitled to additional benefits under the EUC08 program, or who wish to inquire about their rights under the program, should contact their State Workforce Agency.

FOR FURTHER INFORMATION CONTACT: Scott Gibbons, U.S. Department of Labor, Employment and Training Administration, Office of Unemployment Insurance, 200 Constitution Avenue NW., Frances Perkins Bldg. Room S–4524, Washington, DC 20210, telephone number (202) 693–3008 (this is not a toll-free number) or by email: *gibbons.scott@dol.gov.*

Signed in Washington, DC, this 16th day of November, 2011.

Jane Oates,

Assistant Secretary, Employment and Training Administration.

[FR Doc. 2011–30583 Filed 11–28–11; 8:45 am]

BILLING CODE 4510–FW–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2011.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 9, 2011.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 17th day of November 2011.

Michael Jaffe,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[42 TAA petitions instituted between 10/31/11 and 11/11/11]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
81032	Hampton Lumber Mills—Washington, Inc—Darrington Division (Company).	Darrington, WA	10/31/11	10/27/11
81033	Tower Automotive LLC (Union)	Bellevue, OH	10/31/11	10/28/11
81034	Roseburg Forest Prod.—Louisville MS Particleboard (Workers).	Louisville, MS	10/31/11	10/28/11
81035	Dell Computer Corporation (State/One-Stop)	Round Rock, TX	10/31/11	10/28/11
81036	Fair-Rite Products Corporation (State/One-Stop)	Flat Rock, IL	10/31/11	10/27/11
81037	Emerson Power Transmission (Company)	Maysville, KY	10/31/11	10/28/11
81038	Ford Motors (State/One-Stop)	St. Paul, MN	10/31/11	10/27/11
81039	HDM Furniture Industries, Inc. (Plant 10) (Company)	Mt. Airy, NC	11/01/11	10/31/11
81040	HDM Furniture Industries, Inc. (Plant 60) (Company)	Morganton, NC	11/01/11	10/31/11
81041	Vanguard Pai Lung, LLC (Company)	Monroe, NC	11/01/11	10/24/11
81042	Verizon Communications (State/One-Stop)	Greenville, SC	11/01/11	10/31/11
81043	Outcomes Health Information Solutions (Workers)	Albuquerque, NM	11/01/11	10/18/11
81044	FabSol, LLC (Company)	Cadiz, KY	11/02/11	11/01/11
81045	Aerotek Inc. (Workers)	Hanover, MD	11/02/11	11/01/11
81046	International Textile Group (Company)	Greensboro, NC	11/02/11	11/01/11
81047	ERA Systems Corporation (State/One-Stop)	Syracuse, NY	11/02/11	11/01/11
81048	Tiz Door Sales Inc. (State/One-Stop)	Everett, WA	11/02/11	10/31/11
81049	Shin Shin America Inc. (State/One-Stop)	Redmond, WA	11/02/11	11/01/11
81050	Fenton Gift Shops, Inc. (Company)	Williamstown, WV	11/03/11	11/01/11
81051	Parkdale America, LLC (Company)	Rabun Gap, GA	11/03/11	11/02/11
81052	Mohawk Fine Papers (Company)	Hamilton, OH	11/03/11	11/02/11
81053	KFP Corporation (Workers)	Somerset, PA	11/03/11	11/01/11
81054	High Cotton Enterprises, Inc. (Company)	Fort Payne, AL	11/04/11	11/03/11
81055	Litton Loan Servicing (Ocwen) (State/One-Stop)	Irving, TX	11/04/11	11/03/11
81056	Ball Corporation (State)	Terrance, CA	11/07/11	11/03/11
81057	Harper Collins Publishers (Company)	Williamsport, PA	11/08/11	11/07/11
81058	Warren Corporation (Company)	Stafford Springs, CT	11/08/11	11/07/11
81059	Suntec Industries, Inc. (Workers)	Glasgow, KY	11/08/11	11/02/11
81060	Rodney Hunt Company (State/One-Stop)	Orange, MA	11/08/11	11/07/11
81061	Emhart Teknologies (Company)	Campbellsville, KY	11/08/11	11/07/11
81062	Furniture Brands Intl Inc./Thomasville Furniture (Workers)	Thomasville, NC	11/08/11	11/07/11
81063	Cole Hersee Company (State/One-Stop)	Schertz, TX	11/08/11	11/04/11
81064	VTech Communications (State/One-Stop)	Beaverton, OR	11/08/11	10/21/11
81065	ITT VEAM, LLC. (Company)	Watertown, CT	11/08/11	11/07/11
81066	Conoco Phillips, Trainer Refinery (Union)	Trainer, PA	11/08/11	11/02/11
81067	Johnson Controls, Inc. (Company)	Hudson, WI	11/09/11	11/01/11
81068	ET Publishing International, LLC. (Workers)	Miami, FL	11/09/11	11/03/11
81069	Americal Corporation (Company)	Wake Forest, NC	11/09/11	11/08/11
81070	Commercial Vehicle Group (Company)	Tellico Plains, TN	11/10/11	11/09/11
81071	II—VI Inc. (Workers)	Saxonburg, PA	11/10/11	11/09/11
81072	AT&T Corporate Systems: Customer Financial Management (State/One-Stop).	Morristown, NJ	11/10/11	11/09/11
81073	Radici Spandex Corp (Company)	Tuscaloosa, AL	11/10/11	11/04/11

[FR Doc. 2011–30658 Filed 11–28–11; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0026]

Curtis-Straus LLC; Application for Renewal of Recognition; Extension of Comment Period

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice; extension of comment period.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is extending the comment period for its notice presenting the Agency's preliminary finding on the application of Curtis Straus LLC (CSL) for renewal of its Nationally Recognized Testing Laboratory (NRTL).

DATES: Submit information or comments, or a request to extend the comment period, on or before December 14, 2011. All submissions must bear a postmark or provide other evidence of the submission date.

ADDRESSES: Submit comments by any of the following methods:

Electronically: Submit comments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for making electronic submissions.

Fax: If submissions, including attachments, are no longer than 10 pages, commenters may fax submissions to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, or messenger or courier service: Submit one copy of the comments to the OSHA Docket Office, Docket No. OSHA–2009–0026, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. The Docket Office accepts deliveries (hand, express mail, and messenger and courier service) during the Department of

Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (i.e., OSHA–2009–0026). OSHA will place all submissions, including any personal information provided, in the public docket without revision, and will make these submissions available online at *http://www.regulations.gov.*

Docket: To read or download submissions or other material in the docket (e.g., exhibits listed below), go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. The *http://www.regulations.gov* index lists all documents in the docket; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

Extension of comment period: Submit requests for an extension of the comment period on or before December 14, 2011 to the Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210, or by fax to (202) 693–1644.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, U.S. Department of Labor, Room N–3655, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Extension of Comment Period

OSHA is extending the comment period of the notice (76 FR 62850, October 11, 2011) preliminarily denying the renewal of recognition of CSL as an NRTL. This notice requested comments by November 10, 2011. However, comments submitted electronically may have been rejected because the notice referenced the wrong docket number. This extension allows those affected commenters to submit their comments.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this notice. Accordingly, the Agency is issuing this notice pursuant to Sections 6(b) and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 and 657), Secretary of Labor's Order No. 4–2010 (75 FR 55355), and 29 CFR part 1911.

Signed at Washington, DC, on November 22, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–30660 Filed 11–28–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0026]

Curtis-Straus LLC; Application for Renewal of Recognition; Correction

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice; correction.

SUMMARY: The Occupational Safety and Health Administration (OSHA) published a document in the **Federal Register** on October 11, 2011 (76 FR 62850), announcing the application of Curtis-Straus LLC for renewal of its recognition as a Nationally Recognized Testing Laboratory (NRTL), and presented the Agency's preliminary finding to deny the application. The document contained an incorrect docket number. This notice corrects the docket number.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, U.S. Department of Labor, Room N–3655, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2110.

Corrections

In the **Federal Register** of October 11, 2011 (76 FR 62850–62856), correct the docket number as described below.

1. On page 62850, in the third line of the heading section, change the Docket No. to read:

[Docket No. OSHA–2009–0026]

2. On page 62851, in the first column, change the paragraph titled ''Mail, hand delivery, express mail, or messenger or courier service'' to read:

Submit one copy of the comments to the OSHA Docket Office, Docket No. OSHA–2009–0026, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. The Docket Office accepts deliveries (hand, express mail, and messenger and courier service) during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., E.T.

3. On page 62851, in the first column, change the paragraph titled ''Instructions'' to read:

All submissions must include the Agency name and the OSHA docket number (i.e., OSHA–2009–0026). OSHA will place all submissions, including any personal information provided, in the public docket without revision, and will make these submissions available online at *http://www.regulations.gov*

4. On page 62856, in the first column, change the second paragraph under ''V. Preliminary Finding'' to read:

OSHA welcomes public comment as to whether CSL meets the requirements of 29 CFR 1910.7 for renewal of its recognition as an NRTL. Comments should consist of pertinent written documents and exhibits. Commenters needing more time to comment must submit a request in writing, stating the reasons for the request. OSHA must receive the written request for an extension by the due date for comments (see **DATES** above). OSHA will limit any extension to 30 days unless the requester justifies a longer period. OSHA may deny a request for an extension if the requester does not adequately justify it. To obtain or review copies of the publicly available information in CSL's application and other pertinent documents (including exhibits), and all submitted comments, contact the Docket Office, Room N–2625, Occupational Safety and Health Administration, U.S. Department of Labor, at the address listed above under **ADDRESSES**; these materials also are available online at *http://www.regulations.gov* under Docket No. OSHA–2009–0026.

Signed at Washington, DC, on November 22, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–30661 Filed 11–28–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0124]

Advisory Committee on Construction Safety and Health (ACCSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of meetings of the Advisory Committee on Construction Safety and Health (ACCSH) and ACCSH Work Groups, and ACCSH appointments.

SUMMARY: ACCSH will meet December 15–16, 2011, in Washington, DC. In conjunction with the ACCSH meeting,

ACCSH Work Groups will meet December 13–14, 2011. This notice also announces the appointment of a new ACCSH member and ACCSH chair.

DATES: *ACCSH meeting:* ACCSH will meet from 8 a.m. to 4 p.m., Thursday, December 15, 2011, and from 8 a.m. to noon, Friday, December 16, 2011.

ACCSH Work Group meetings: ACCSH Work Groups will meet Tuesday, December 13–14, 2011. (For Work Group meeting times, see the Work Group schedule in the **SUPPLEMENTARY INFORMATION** section of this notice.)

Written comments, requests to speak, speaker presentations, and requests for special accommodation: Comments, requests to address the ACCSH meeting, speaker presentations (written or electronic), and requests for special accommodations for ACCSH and ACCSH Work Group meetings must be submitted (postmarked, sent, transmitted) by December 7, 2011.

ADDRESSES: *ACCSH and ACCSH Work Group meetings:* ACCSH and ACCSH Work Group meetings will be held in Room N–3437 A–C, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak, and speaker presentations: Interested persons may submit comments, requests to speak at the ACCSH meeting, and speaker presentations using one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the on-line instructions for submissions.

Facsimile (Fax): If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: You may submit your comments, requests to speak, and speaker presentations to the OSHA Docket Office, Docket No. OSHA–2011–0124, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2350 (TTY (877) 889–5627). Deliveries (hand deliveries, express mail or messenger or courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t., weekdays.

Requests for special accommodations: Please submit requests for special accommodations to attend the ACCSH and ACCSH Work Group meetings to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *chatmon.veneta@dol.gov.*

Instructions: All submissions must include the agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2011–0124). Due to security-related procedures, submissions by regular mail may experience significant delays. Please contact the OSHA Docket Office for information about security procedures for making submissions. For additional information on submitting comments, requests to speak, and speaker presentations, see the **SUPPLEMENTARY INFORMATION** section of this notice.

Comments, requests to speak, and speaker presentations, including any personal information provided, will be posted without change at *http://www.regulations.gov.* Therefore, OSHA cautions individuals about submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Mr. Frank Meilinger, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis@osha.gov.*

For general information about ACCSH and ACCSH meetings: Mr. Francis Dougherty, OSHA, Directorate of Construction, Room N–3468, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2020; email *dougherty.francis@dol.gov.*

SUPPLEMENTARY INFORMATION:

ACCSH Meeting

ACCSH will meet December 15–16, 2011, in Washington, DC. The meeting is open to the public.

ACCSH is authorized to advise the Secretary of Labor (Secretary) and Assistant Secretary of Labor for Occupational Safety and Health (Assistant Secretary) in the formulation of standards affecting the construction industry, and on policy matters arising in the administration of the safety and health provisions under the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3701 *et seq.*) and the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*) (see also 29 CFR 1911.10 and 1912.3).

The tentative agenda for this meeting includes:

- *Welcome/Remarks from the Office of the Assistant Secretary;*
- *Update from the Directorate of Construction on OSHA's outreach efforts, enforcement issues; and rulemaking projects;*
- *Update on NIOSH Programs;*
- *Presentation from the Seattle Tunnel and Rail Team (START);*
- *ACCSH's consideration of, and recommendations on, the following OSHA proposed rules:*
  - *Direct final rule/proposed rule to update personal protective equipment standards on head protection for construction work (29 CFR 1926.100); and*
  - *Proposed rule on Standards Improvement Project (SIP) IV;*
- *Sewage treatment plant failure presentation from the Office of Engineering Services;*
- *Update from the Directorate of Technical Support and Emergency Management;*
- *Backing operations presentation;*
- *Committee and Work Group Administration and Reports; and*
- *Public comment period.*

ACCSH meetings are transcribed and detailed minutes of the meetings are prepared. OSHA places the transcript and minutes in the public docket for the meeting. The docket also includes ACCSH Work Group reports, speaker presentations, comments, and other materials submitted to the Committee.

ACCSH Work Group Meetings

In conjunction with the ACCSH meeting, the following ACCSH Work Groups will meet on December 13, 2011:

- Backing Operations 10:10 a.m. to 12:10 p.m.
- Prevention through Design 1 to 3 p.m.
- Construction Health Hazard 3:10 to 5:10 p.m.

The following ACCSH Work Groups will meet on December 14, 2011:

- Reinforced Concrete in Construction 8 to 10 a.m.
- Injury and Illness Prevention Programs 10:10 a.m. to 12:10 p.m.
- Multilingual Issues, Diversity, Women in Construction 1 to 3 p.m.

ACCSH Work Group meetings are open to the public. For additional information on ACCSH Work Group meetings or participating in them, please contact Mr. Dougherty or look on the ACCSH page on OSHA's Web page at *http://www.osha.gov.*

Public Participation, Submissions, and Access to Public Record

ACCSH and ACCSH Work Group meetings: ACCSH and ACCSH Work Group meetings are open to the public. Individuals attending meetings at the U.S. Department of Labor must enter the

building at the visitors entrance, at 3rd and C Streets NW., and pass through building security. Attendees must have valid government-issued photo identification to enter the building. For additional information about building security measures for attending the ACCSH and ACCSH Work Group meetings, please contact Ms. Chatmon (See **ADDRESSES** section).

Individuals needing special accommodations to attend the ACCSH and ACCSH Work Group meetings also should contact Ms. Chatmon.

Submission of written comments: Interested persons may submit comments using one of the methods in the **ADDRESSES** section. All submissions must include the agency name and docket number for this ACCSH meeting (Docket No. OSHA–2011–0124). OSHA will provide copies of submissions to ACCSH members.

Because of security-related procedures, submissions by regular mail may experience significant delays. For information about security procedures for submitting materials by hand delivery, express mail or messenger or courier service, contact the OSHA Docket Office (see **ADDRESSES** section).

Requests to speak and speaker presentations: Individuals who want to address ACCSH at the meeting must submit their requests to speak and their written or electronic presentations (*e.g.,* PowerPoint) by December 7, 2011, using one of the methods listed in the **ADDRESSES** section. The request must state the amount of time requested to speak, the interest the presenter represents (*e.g.,* business, organization, affiliation), if any, and a brief outline of the presentation. PowerPoint presentations and other electronic materials must be compatible with PowerPoint 2003 and other Microsoft Office 2003 formats.

Alternately, at the ACCSH meeting, individuals may request to address ACCSH briefly by signing the public-comment request sheet and listing the topic(s) to be addressed. They also must provide 20 hard copies of any materials, written or electronic, they want to present to ACCSH.

Requests to address the committee may be granted at the ACCSH Chair's discretion, and as time and circumstances permit. The Chair will give first preference to those individuals who filed speaker requests and presentations by December 7, 2011.

Public docket of the ACCSH meeting: OSHA places comments, requests to speak, and speaker presentations, including any personal information you provide, in the public docket of this ACCSH meeting without change and may be available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting personal information such as Social Security numbers and birthdates.

OSHA also places the meeting transcript, meeting minutes, documents presented at the ACCSH meeting, Work Group reports, and other documents pertaining to the ACCSH meeting in the public docket. These documents are made available online at *http://www.regulations.gov.*

Access to the public record of ACCSH meetings: To read or download documents in the public docket of this ACCSH meeting, go to Docket No. OSHA–2011–0124 at *http://www.regulations.gov.* All documents in the public record for this meeting are listed in the *http://www.regulations.gov* index; however, some documents (*e.g.,* copyrighted materials) are not publicly available through that Web page. All documents in the public record, including materials not available through *http://www.regulations.gov,* are available for inspection and copying in the OSHA Docket Office (see **ADDRESSES** section). Please contact the OSHA Docket Office for assistance making submissions to, or obtaining materials from, the public docket.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, also are available on the OSHA Web page at *http://www.osha.gov.*

Announcement of ACCSH Appointments

The Secretary appointed ACCSH Member Erich ''Pete'' Stafford to be the new ACCSH Chair. Mr. Stafford replaces Mr. Frank Migliaccio, former ACCSH Chair and member, who announced his retirement at the July 28, 2011, meeting. In addition, the Secretary appointed Mr. Gerald Ryan, Director of Training, Health and Safety for the Operative Plasterers' and Masons' International, to serve the remainder of Mr. Migliaccio's unexpired term as an ACCSH employee representative. Mr. Ryan's term ends on May 18, 2012.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, authorized the preparation of this notice under the authority granted by Section 7 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656), Section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 3704), the Federal Advisory Committee Act (5 U.S.C. App. 2), 29 CFR parts 1911 and 1912, 41 CFR part 102, and Secretary of Labor's Order No. 4–2010 (75 FR 55355 (9/10/2010)).

Signed at Washington, DC, on November 22, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–30564 Filed 11–28–11; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2011–0065]

National Advisory Committee on Occupational Safety and Health (NACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Announcement of meetings of the National Advisory Committee on Occupational Safety and Health (NACOSH) and NACOSH Work Groups.

SUMMARY: The National Advisory Committee on Occupational Safety and Health (NACOSH) will meet December 14 and 15, 2011, in Washington, DC. In conjunction with the committee meeting, NACOSH Work Groups will meet on December 14, 2011.

DATES: *NACOSH meeting:* NACOSH will meet from 1 to 5 p.m., Wednesday, December 14, 2011, and from 9 a.m. to 4:30 p.m. on Thursday, December 15, 2011.

NACOSH Work Group meetings: The NACOSH Work Groups will meet from 9 a.m. to noon, December 14, 2011.

Submission of comments, requests to speak, speaker presentations and requests for special accommodation: Comments, requests to speak at the NACOSH meeting, speaker presentations, and requests for special accommodations for the NACOSH and NACOSH Work Group meetings must be submitted (postmarked, sent, transmitted) by December 7, 2011.

ADDRESSES: *NACOSH and NACOSH Work Group meetings:* NACOSH and its Work Groups will meet in Room S–4215 A/B/C U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

Submission of comments, requests to speak and speaker presentations: You must submit comments, requests to speak at the NACOSH meeting and speaker presentations, identified by the docket number for this **Federal Register** notice (Docket No. OSHA–2011–0065), by one of the following methods:

Electronically: You may submit materials, including attachments, electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for making submissions.

Facsimile: If your submission, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, express delivery, messenger or courier service: You may submit your materials to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 693–2350 (TTY (887) 889–5627). Deliveries (hand, express mail, messenger, courier service) are accepted during the Department of Labor's and OSHA Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t., weekdays.

Requests for special accommodation: You may submit requests for special accommodations for the NACOSH and NACOSH Work Group meetings by hard copy, telephone, or email to Ms. Veneta Chatmon, OSHA, Office of Communications, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *chatmon.veneta@dol.gov.*

Instructions: All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2011–0065). Because of security-related procedures, submission by regular mail may result in significant delay in receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions. For additional information about submitting comments, requests to speak and speaker presentations see the **SUPPLEMENTARY INFORMATION** section of this notice.

Comments, requests to speak and speaker presentations, including personal information provided, will be placed in the public docket and may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Mr. Frank Meilinger, OSHA, Office of Communications, U.S. Department of Labor, Room N3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; *meilinger.francis2@dol.gov.*

For general information: Ms. Deborah Crawford, OSHA, Directorate of Evaluation and Analysis, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1932; email *crawford.deborah@dol.gov.*

SUPPLEMENTARY INFORMATION

NACOSH Meeting

NACOSH will meet Wednesday, December 14, 2011, and Thursday December 15, 2011, in Washington, DC. NACOSH meetings are open to the public.

Section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) authorizes NACOSH to advise the Secretary of Labor and the Secretary of Health and Human Services on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory body and operates in accordance with the OSH Act, the Federal Advisory Committee Act (5 U.S.C. App. 2), and regulations issued pursuant to those laws (29 CFR part 1912a, 41 CFR part 102–3).

The tentative agenda of the NACOSH meeting includes:

- Remarks from the Assistant Secretary of Labor for Occupational Safety and Health;
- Remarks from the Director of the National Institute for Occupational Safety and Health (NIOSH);
- NACOSH Work Group reports;
- Discussions on electronic health records;
- Discussions on prevention through design; and
- Public comments.

OSHA transcribes and prepares detailed minutes of NACOSH meetings. OSHA places meeting transcripts and minutes in the public record of the NACOSH meeting.

NACOSH Work Group Meetings

The Injury and Illness Prevention Programs and Recordkeeping Work Groups will meet in conjunction with the NACOSH meeting. Those Work Groups will meet from 9 a.m. to noon, December 14, 2011, and report back to the full committee at the December 15, 2011, NACOSH meeting.

Public Participation

NACOSH and NACOSH Work Group meetings: NACOSH and NACOSH Work Group meetings are open to the public. Individuals attending meetings at the U.S. Department of Labor must enter the building at the Visitors' Entrance, at 3rd and C Streets NW., and pass through Building Security. Attendees must have valid government-issued photo identification to enter the building. Please contact Ms. Crawford for additional information about building security measures for attending the NACOSH and NACOSH Work Group meetings.

Individuals needing special accommodations to attend NACOSH and NACOSH Work Group meetings should contact Ms. Chatmon (see **ADDRESSES** section).

Submission of written comments, requests to speak and speaker presentations: You must submit written comments, requests to speak at the NACOSH meeting and speaker presentations by December 7, 2011, using one of the methods listed in the **ADDRESSES** section. All submissions must include the Agency name and docket number for this **Federal Register** notice (Docket No. OSHA–2011–0065). OSHA will provide submissions to NACOSH members prior to the meeting.

Requests to speak must state the amount of time requested to speak, the interest the individual represents (e.g., organization name), if any, and a brief outline of the presentation. Electronic speaker presentations (e.g., PowerPoint) must be compatible with PowerPoint 2003 and other Microsoft 2003 formats. Requests to address NACOSH may be granted at the discretion of the NACOSH chair and as time permits.

Because of security-related procedures, submissions by regular mail may result in significant delay in receipt. Please contact the OSHA Docket Office for information about security procedures for making submissions by hand delivery, express delivery, messenger or courier service.

Public docket of the NACOSH meeting: OSHA places comments, requests to speak and speaker presentations, including any personal information you provide, in the public docket of this NACOSH meeting without change and documents may be available online at *http://www.regulations.gov.* Therefore, OSHA cautions you about submitting certain personal information such as Social Security numbers and birthdates.

OSHA also puts transcripts and minutes, Work Group reports and other documents from the NACOSH meeting in the public record of the NACOSH meeting. Although all submissions are listed in the *http://www.regulations.gov* index, some documents (e.g., copyrighted materials) are not publicly available to read or download through that Web page. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office.

To read or download documents in the public docket of this NACOSH meeting go to Docket No. OSHA–2011–0065 at *http://www.regulations.gov.* For

information on using *http://www.regulations.gov* to access the docket, click on the ''Help'' tab at the top of the Home page. Contact the OSHA Docket Office for information about materials not available through that Web page and for assistance in using the Internet to locate submissions and other documents in the public docket.

Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This notice, as well as news releases and other relevant information, also are available on the OSHA Web page at *http://www.osha.gov.*

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by Section 7 of the Occupational Safety and Health Act of 1970 (U.S.C. 656), the Federal Advisory Committee Act (5 U.S.C. App. 2); 29 CFR part 1912a; 41 CFR part 102–3; and Secretary of Labor's Order No. 4–2010 (75 FR 55355, 9/10/2010).

Signed at Washington, DC, on November 22, 2011.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2011–30565 Filed 11–28–11; 8:45 am]

BILLING CODE 4510–26–P

MERIT SYSTEMS PROTECTION BOARD

Oral Argument

AGENCY: Merit Systems Protection Board.

ACTION: Notice.

SUMMARY: Notice is hereby given of the scheduling of oral argument in the matters of: *James C. Latham* v. *U.S. Postal Service,* MSPB Docket Number DA–0353–10–0408–I–1; *Ruby N. Turner* v. *U.S. Postal Service,* MSPB Docket Number SF–0353–10–0329–I–1; *Arleather Reaves* v. *U.S. Postal Service,* MSPB Docket Number CH–0353–10–0823–I–1; *Cynthia E. Lundy* v. *U.S. Postal Service;* MSPB Docket Number AT–0353–11–0369–I–1; and *Marcella Albright* v. *U.S. Postal Service,* MSPB Docket Number DC–0752–11–0196–I–1.

Date and Time: Tuesday, December 13, 2011, at 10 a.m.

Place: The United States Court of Appeals for the Federal Circuit, Room 201, 717 Madison Place, NW., Washington DC.

Status: Open.

FOR FURTHER INFORMATION CONTACT: Matthew Shannon, Merit Systems Protection Board, Office of the Clerk of the Board, 1615 M Street NW., Washington, DC 20419; (202) 254–4477 or (202) 653–7200; *mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 5 CFR 1201.117(a)(2), the Merit Systems Protection Board (''MSPB'' or ''Board'') will hear oral argument in the matters of *James C. Latham* v. *U.S. Postal Service,* MSPB Docket Number DA–0353–10–0408–I–1; *Ruby N. Turner* v. *U.S. Postal Service;* MSPB Docket Number SF–0353–10–0329–I–1; *Arleather Reaves* v. *U.S. Postal Service,* MSPB Docket Number CH–0353–10–0823–I–1; *Cynthia E. Lundy* v. *U.S. Postal Service;* MSPB Docket Number AT–0353–11–0369–I–1; and *Marcella Albright* v. *U.S. Postal Service,* MSPB Docket Number DC–0752–11–0196–I–1. *Latham, et al.* raise the following legal issues: (1) May a denial of restoration be ''arbitrary and capricious'' within the meaning of 5 CFR 353.304(c) solely for being in violation of the agency's own internal rules; and (2) what is the extent of the agency's restoration obligation under its own internal rules, i.e., under what circumstances do the agency's rules require it to offer a given task to a given partially recovered employee as modified work? The Board requested and received an advisory opinion from the Office of Personnel Management (OPM) in this matter, see 5 U.S.C. 1204(e)(1)(A), and the Board invited amicus curiae to submit briefs. *See* 76 FR 44373, July 25, 2011. The Board also has invited OPM and the amici curiae to present oral argument along with the parties. The briefs submitted by the parties, OPM, and the amici curiae are available for viewing on MSPB's Web site at *http://www.mspb.gov/oralarguments/.* A recording of the oral argument will also be made available on the Web site. The public is welcome to attend this hearing for the sole purpose of observation. Persons with disabilities who require reasonable accommodation to participate in this event should direct the request to MSPB's Director of Equal Employment Opportunity at (202) 254–4405 and V/TDD users should call via relay. All requests should be made at least one week in advance.

William D. Spencer,

Clerk of the Board.

[FR Doc. 2011–30659 Filed 11–28–11; 8:45 am]

BILLING CODE 7400–01–P

MILLENNIUM CHALLENGE CORPORATION

[MCC FR 11–12]

Notice of Entering Into a Compact With the Republic of Indonesia

AGENCY: Millennium Challenge Corporation.

ACTION: Notice.

SUMMARY: In accordance with Section 610(b)(2) of the Millennium Challenge Act of 2003 (Pub. L. 108–199, Division D), the Millennium Challenge Corporation (MCC) is publishing a summary and the complete text of the Millennium Challenge Compact between the United States of America, acting through the Millennium Challenge Corporation, and the Republic of Indonesia. Representatives of the United States Government and the Republic of Indonesia executed the Compact documents on November 19, 2011.

Dated: November 23, 2011.

Melvin F. Williams, Jr.,

VP/General Counsel and Corporate Secretary, Millennium Challenge Corporation.

Summary of Millennium Challenge Compact With the Republic of Indonesia

The five-year, $600 million compact with the Government of Indonesia (the ''GOI'') is aimed at reducing poverty through economic growth (the ''Compact''). To this end, the Compact's three projects are intended to increase incomes of households in project areas through increased productivity of labor and enterprises, reduced household energy costs, and improved provision of growth-enhancing goods and services by the public sector.

1. Project Overview and Activity Descriptions

To advance the Compact goal of reducing poverty through economic growth, the Compact will fund three projects. The *Green Prosperity Project* aims to (i) increase productivity and reduce reliance on fossil fuels by expanding renewable energy; and (ii) increase productivity by improving land use practices and management of natural resources. These objectives are consistent with GOI development plans to support low carbon economic development and the protection of natural capital leading to increased household incomes in project areas. The *Community-Based Health and Nutrition to Reduce Stunting Project* aims to reduce and prevent low birth weight, childhood stunting, and

malnourishment of children in project areas, and thereby increase household incomes through cost savings, increases in productivity, and higher lifetime earnings. Finally, the *Procurement Modernization Project* aims to (i) achieve significant government expenditure savings on procured goods and services; and (ii) improve the delivery of public services through expenditure of planned budgets.

Green Prosperity (GP) Project

The majority of Indonesia's poor live in rural areas that are rich in natural resources, but the over-extraction and inadequate management of these resources threaten Indonesia's ability to sustain high rates of economic growth and reduce poverty. It is estimated that over 10,000 villages in Indonesia (13 percent) do not have access to reliable and affordable electricity, and many more rely on expensive and dirty diesel generation. Illegal logging, conversion of marginal lands for agriculture, water pollution, and other unsustainable land use practices are adversely affecting the natural assets that people rely on for their livelihoods and wellbeing. The lack of clear data on land resource use and jurisdictional boundaries between villages and districts significantly hinders GOI agencies and land use planners from managing critical natural resources effectively. Ultimately, protecting Indonesia's natural resource base in the face of demographic, social, and economic forces requires sustainable and equitable economic alternatives.

Indonesia is among the world's top emitters of greenhouse gases. The majority of these greenhouse gas emissions result from deforestation and land use conversion; however, emissions from energy and industrial sources are growing rapidly. The GOI is committed to a more sustainable future, having set a target of reducing greenhouse gas emissions by 26 percent by 2020, while maintaining a target of seven percent annual economic growth. Increasing access to clean and reliable energy in rural areas and improving the stewardship of natural assets are critical priorities to achieving this goal.

The GP Project will promote high levels of environmentally sustainable, growth as set forth in the GOI's medium to long-term development plans. The project will provide a combination of technical and financial assistance to support rural economic development that raises household incomes of Indonesians in a manner that reduces reliance on fossil fuels, improves land management practices, protects natural capital, and complements efforts to reduce emissions from deforestation and environmental degradation. The GP Project will involve local communities and governments in activities to improve the clarity and implementation of government policies and regulations.

The centerpiece of the GP Project is a funding facility that will support investments in two areas: (i) Expansion of renewable energy; and (ii) sustainable management and use of natural resources (the ''GP Facility''). These investments will enhance economic growth, reduce Indonesia's carbon footprint, and help align incentives and practices to foster improved environmental stewardship at the local level.

MCC and the GOI will start the GP Project in the provinces of Jambi and West Sulawesi. Based on program experience in the two start-up provinces, other eligible provinces will be added by mutual agreement. Districts will be selected based on a range of geographic, economic, environmental, and social indicators, including poverty levels, renewable energy potential, economic growth potential, governance, forest cover, and peat lands under threat of degradation or destruction. Districts must have government-approved spatial plans in place and agree to make land use information and licensing processes transparent and accessible.

Key implementing partners and project sponsors are expected to include local governments and institutions; private enterprises in the agriculture, forestry, water and energy sectors; financial institutions; small-holder farmers; and local and international civil society organizations. GP Project activities include:

- *Participatory Land Use Planning Activity:* The purpose of this activity is to ensure that projects funded by the GP Facility are designed on the basis of accurate spatial and land use data, and adhere to and reinforce existing national laws, regulations, and plans. This activity also will help strengthen the capacity of local communities and district level institutions to manage their own land and resources. MCC funding will support: (i) Administrative boundary setting; and (ii) updating and integrating inventories of land and other natural resource use licenses and other relevant data.
- *Technical Assistance and Oversight Activity:* Technical assistance will be provided to district governments, project sponsors, community groups, and financial institutions to assist with the preparation of low carbon development work plans, project identification and design, preparation of business plans and funding applications, and capacity building, where necessary. The purpose of this activity is to develop a pipeline of projects for the GP Facility, while facilitating significant stakeholder consultations at the local level.
- *GP Facility Activity:* The GP Facility will finance projects in the renewable energy and natural resources management sectors. One or more independent facility managers acceptable to MCC will implement the GP Facility.

The GP Facility will contain at least two funding windows: (i) A window to finance commercial scale renewable energy investments reflecting the priority of the GP Project and private sector investments in natural resource management; and (ii) a grants window to support community-based, small scale renewable energy and other projects to promote sustainable natural resource management and improve land use practices.

The GOI will develop a comprehensive operations manual(s), subject to MCC approval, that governs operations of the GP Facility. The operations manual(s) will include detailed investment criteria and outline monitoring and reporting procedures to ensure that investment objectives are being achieved, and to verify compliance with other relevant criteria, including environmental and social safeguard requirements.

Proposals will be reviewed and recommended for approval in accordance with the operations manual. The operations manual will contain minimum project eligibility criteria reflecting: (i) A minimum economic rate of return (''ERR'') as defined by the MCC hurdle rate; (ii) a core objective of improving environmental stewardship; (iii) contribution (directly or indirectly) to the reduction of greenhouse gas emissions; (iv) equal access for women and other vulnerable groups to the project or its benefits; and (v) for commercially viable projects, suitable risk allocations to the parties.

- *Green Knowledge Activity:* The objective of this activity is to build local, provincial, and national capacity to advance Indonesia's low carbon development strategy nationwide within the context of the GP Project. Specifically, MCC funding will support:
  - Capacity building for local and provincial stakeholders to stimulate a shift toward low carbon development policies in local and provincial governments, and to support the sustainability of MCC's investment in the GP Project; and
  - Development and improvement of centers of excellence at selected

Indonesian universities in science and technology related to low carbon development with an emphasis on renewable energy and closely related areas of natural resource management.

Community-Based Health and Nutrition to Reduce Stunting Project

Currently, 35.6 percent of children under 2 years old in Indonesia are severely stunted, as measured by international standards.[1] The consequences of the cumulative nutritional deprivation in a child's early life include higher infant and child mortality, increased susceptibility to infection and illness, reduced adult physical stature, and impaired cognitive abilities, all of which result in long-term economic loss.

The purpose of the Community-Based Health and Nutrition to Reduce Stunting Project is to reduce stunting and low birth weight in infants and children 0–2 years old in selected provinces. The project proposes an incentives-based scheme that facilitates community demand for tools to reduce stunting and improves the supply response and capacities of the Ministry of Health at the district and subdistrict levels.

This project builds on existing community engagement mechanisms already tested under a Ministry of Home Affairs community-driven development program pilot, Generasi, implemented with assistance from the national community empowerment program support trust fund (PSF) managed by the World Bank. Generasi successfully supported community efforts to improve targeted health, nutrition, and education indicators. With MCC support, the GOI will revise the program to obtain stronger nutrition and stunting outcomes. The ''Generasi Plus'' approach reinforces the community incentives system originally piloted under the Generasi program, and adds provider incentives to ensure that the supply of health services will meet communities' demand. Project activities include:

• *Community Projects Activity:* MCC funding will be used by the PSF to finance block grants, participatory planning, and technical assistance to communities. To receive funding, villages participating in Generasi commit to improving 12 basic health and education indicators. Under Generasi Plus, stunting indicators (including a measure of children's height for age) will be added to the existing 12 indicators. Facilitators, trained specifically in nutrition and stunting interventions, will work with local health and sanitation service providers to assist villagers in a participatory planning process to help identify problems and find local solutions to be funded using the block grant. In order to focus communities on the most beneficial interventions, the GOI will base the size of the villages' Generasi Plus block grant for the subsequent year partly on their performance on each of the targeted health and education indicators.

• *Supply-Side Interventions Activity:* MCC funding will be used by the PSF (or other mechanism acceptable to MCC) to support: (i) the creation of an enhanced training program for all health and sanitation service providers in the designated project areas to encourage a focus on stunting reduction and related interventions; and (ii) testing various types of incentives to service providers based on their service delivery performance. MCC funding will also be used for grants to stimulate market-based responses to identified demand for nutrition and sanitation interventions.

• *Communications, Project Management, and Evaluation Activity:* MCC funding will be used by the PSF to support development and implementation of a national stunting awareness campaign with a focus on healthy families that emphasizes shared decision making between women and men within the household.

Procurement Modernization Project

Efficient and effective public procurement is a strategic public sector function and a fundamental component of good governance. Indonesia's existing public procurement systems are highly vulnerable to fraud, waste, and abuse resulting in significant loss of funds and diminished quality of services, with some studies estimating that the equivalent of over $15 billion could be lost to corrupt and inept procurement practices in 2011 alone. Indonesia has issued two presidential regulations to modernize its public procurement system. These presidential regulations require the formation of Procurement Service Units (PSUs) at the national and local levels to serve as permanent, independent units where procurement professionals will provide a centralized procurement service. While approximately 150 PSUs have been established, most do not meet the requirements of a modernized procurement function and questions remain about how to organize and define the roles and responsibilities of the PSUs in local and national government. The National Public Procurement Policy Agency (LKPP) is eager to implement these modernization efforts and to promote international best practices in public procurement. Project activities include:

• *Procurement Professionalization Activity:* The next steps in the procurement reform agenda for Indonesia are to: (i) Build a professional procurement workforce; (ii) create an institutionalized role and structure that provides sufficient authority to implement good practice; and (iii) provide a career path to incentivize adherence to best practices, while strengthening controls such as procurement and financial audits, which are needed to ensure improved institutional performance. To this end, the Procurement Modernization Project will implement the following mutually reinforcing subactivities:

○ *Institutional Structure and Professionalization of PSUs* to support PSUs at the various levels of government by: (i) determining standard staffing needs and strengthening operational modalities of PSUs; (ii) supporting LKPP's human resource development strategy by establishing a curriculum and recognizing training institutes through LKPP's accreditation process; and (iii) supporting development of training modules for GOI's auditors (inspectors general) to conduct compliance and performance audits of the procurement system.

○ *Procurement Management Information System* to support: (i) development of an information technology system to create a data warehouse to maintain complete records of procurement activity; (ii) testing of a procurement management information system module at pilot sites; (iii) establishment of a catalog purchasing system (commonly known as an e-catalog system) to ease the administrative burden and transaction costs related to purchasing routine commercial products and services; and (iv) the development of the procurement procedures and standard bidding documents for framework contracting.

This activity will be implemented in two phases. Phase one will pilot the program to test the core elements of the reform program across a variety of institutional settings in Indonesia to ensure that procurement reform generates the intended results. During phase one, up to 30 PSUs will be provided with assistance to build the capability of and provide professional credentials to the procurement workforce, and to institute improved procurement practices. If certain

[1] Low height for age (as measured by two standard deviations below height for age).

conditions are met,[2] the successful models developed in phase one would then be rolled out to a larger set of existing or newly created PSUs under phase two, with a target to create a workforce of 500 procurement professionals working in permanent, full-time positions in established PSUs. It is estimated that this would provide permanent staffing for at least 100 PSUs.

• *Policy and Procedure Development Activity:* This activity consists of the following two subactivities that, together, address major gaps in the procedural framework and operation of the procurement system in Indonesia.

○ *Competitive Tendering for Public Private Partnerships (PPPs)* to support: (i) preparation of guidelines and standard bidding documents for competitive tendering of PPP projects and development of a toolkit with templates and model documents for procurement planning and project preparation; (ii) a pilot program to assist trained procurement officials to conduct a PPP infrastructure project in at least one line ministry or subnational administration; and (iii) implementation of recommended adjustments to the e-procurement system and a PPP project management system.

○ *Procedures for Sustainable Procurement* to support the development of processes and procedures to meet the GOI's commitment to purchasing environmentally-friendly goods and services. Developing the sustainable procurement framework will be implemented in three stages—discovery, establishment, and implementation—leading to a pilot program. MCC and the GOI will evaluate this subactivity's performance at the end of each stage and will move forward with the next stage only upon mutual consent.

2. Compact Budget

Projects and activities	Millions (US$)
Green Prosperity Project	332.5
(A) Participatory Land Use Planning Activity	25.0
(B) Technical Assistance and Oversight Activity	50.0
(C) Green Prosperity Facility Activity	242.5
(D) Green Knowledge Activity	15.0
Community-Based Nutrition Project	131.5
(A) Community Projects Activity	81.6
(B) Supply-Side Activity	36.0
(C) Communications, Project Management and Evaluations Activity	13.9
Procurement Modernization Project	50.0
(A) Procurement Professionalization Activity	46.4
(B) Policy and Procedure Activity	3.6
Monitoring and Evaluation	10.2
Program Administration and Control	75.8
Program Administration	70.8
Targeted Gender Activities	5.0
Total Compact Budget	600.0

3. Administration

The Compact also includes program administration costs estimated at $70.8 million over a five-year timeframe, including the costs of administration, management, auditing, and fiscal and procurement services. In addition, the cost of monitoring and evaluation of the Compact and integration of MCC's gender policy is budgeted at approximately $15.2 million.

4. Benefits and Beneficiaries

The *Green Prosperity Project* is expected to benefit households and businesses in targeted districts, primarily through expanded access to renewable energy and improved natural resource management. Improved land use practices may also indirectly benefit other public and private stakeholders downstream or adjacent to Green Prosperity Project provinces or districts. The Green Knowledge Activity is expected to benefit businesses and households at the national level. Economic rates of return are not currently estimated for this project because the future impact of subprojects will not be known until the investment facility is established and specific projects are identified, developed, and assessed. However, activities funded under the Green Prosperity Facility, will be required to have an ERR above 10 percent (MCC's hurdle rate). A subset of monitoring and evaluation indicators and targets for the Green Prosperity Project will be formulated as a condition to entry into force of the Compact.

The *Community-Based Nutrition Project* is expected to benefit up to 2.9 million children and their families in up to 7,000 villages by enhancing their human capital and lifetime income and reducing health costs in several provinces.[3] The preliminary estimated ERR on this project is 13 percent. ERR calculations are an estimate, using the best information available at the time. This figure represents a potential range of outcomes that account for the uncertainty of core parameters.

The *Procurement Modernization Project* is expected to support improved performance of up to 100 Procurement Service Units that are being established in local and central governments. Beneficiaries of this project will be residents and businesses located in and with economic relationships in the targeted districts, in addition to those benefitting from the public goods and services procured by participating national level ministries. Due to this project's groundbreaking nature, comparative data do not yet exist to calculate an ERR to quantify the benefits of the project. However, as outlined in the project description above, the project is structured in two phases. Phase one will help quantify the benefits and, in order to proceed with phase two, the Compact will require that planned activities have an ERR above 10 percent. A subset of monitoring and evaluation indicators and targets for the Procurement

[2] Conditions include: (i) Conclusion of an assessment of phase one; (ii) achievement of agreed legal and policy changes; (iii) agreement regarding the final design of phase two; and (iv) demonstration that the projected ERR is at or above 10 percent for phase two.

[3] West Java, East Java, Nusa Tenggara Timur, Nusa Tenggara Barat, Gorontalo, and West Sulawesi.

Modernization Project will be formulated as a condition to entry into force of the Compact.

Millennium Challenge Compact Between the United States of America Acting Through the Millennium Challenge Corporation and the Republic Of Indonesia

Millennium Challenge Compact

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Millennium Challenge Compact

Preamble

This Millennium Challenge Compact (this ''*Compact*'') is between the United States of America, acting through the Millennium Challenge Corporation, a United States government corporation (''*MCC*''), and the Republic of Indonesia, acting through its ministries and other governmental entities as appropriate (the ''*Government*''). MCC and the Government are referred to in this Compact individually as a ''*Party*'' and collectively as the ''*Parties*''. Capitalized terms used in this Compact will have the meanings provided in Annex V.

Recognizing that the Parties are committed to the shared goals of promoting economic growth and the elimination of extreme poverty in Indonesia and that MCC assistance under this Compact supports Indonesia's demonstrated commitment to strengthening good governance, economic freedom and investments in people;

Recalling that the Government consulted with the private sector and civil society of Indonesia to determine the priorities for the use of Millennium Challenge Corporation assistance and developed and submitted to MCC a proposal for such assistance to achieve lasting economic growth and poverty reduction; and

Recognizing that MCC wishes to help Indonesia implement the program described herein to achieve the goal and objectives described herein (as such program description and objectives may be amended from time to time in accordance with the terms hereof, the ''*Program*'');

The Parties hereby agree as follows:

Article 1. Goal and Objectives

Section 1.1 Compact Goal

The goal of this Compact is to reduce poverty in Indonesia through economic growth in Indonesia (the ''*Compact Goal*'').

Section 1.2 Project Objectives

The Program consists of the projects described in Annex I (each a ''*Project*'' and collectively, the ''*Projects*''). The objective of each of the Projects (each a ''*Project Objective*'' and collectively, the ''*Project Objectives*'') is to:

(a) (i) Increase productivity and reduce reliance on fossil fuels by expanding renewable energy; and (ii) increase productivity and reduce land-based greenhouse gas emissions by improving land use practices and management of natural resources (the ''*GP Objective*'');

(b) Reduce and prevent low birth weight and childhood stunting and malnourishment of children in project areas, and to increase household income through cost savings, productivity growth and higher lifetime earnings (the ''*Nutrition Objective*''); and

(c) Achieve significant government expenditure savings on procured goods and services, while assuring their quality satisfies the public need, and to achieve the delivery of public services as planned (the ''*Procurement Modernization Objective*'').

Article 2. Funding and Resources

Section 2.1 Program Funding

Upon entry into force of this Compact in accordance with Section 7.3, MCC shall grant to the Government, under the terms of this Compact, an amount not to exceed Five Hundred Eighty-Eight Million United States Dollars (US$588,000,000) (''*Program Funding*'') for use by the Government to implement the Program. The allocation of Program Funding is generally described in Annex II.

Section 2.2 Compact Implementation Funding

(a) Upon signature of this Compact, MCC shall grant to the Government, under the terms of this Compact and in addition to the Program Funding described in Section 2.1, an amount not to exceed Twelve Million United States Dollars (US$12,000,000) (''*Compact Implementation Funding*'') under Section 609(g) of the Millennium Challenge Act of 2003, as amended (the ''*MCA Act*''), for use by the Government to facilitate implementation of the Compact, including for the following purposes:

(i) Financial management and procurement activities (including costs related to standby agents procured by MCC);

(ii) Administrative activities (including start-up costs such as staff salaries) and administrative support expenses such as rent, computers and other information technology or capital equipment;

(iii) Monitoring and evaluation activities;

(iv) Feasibility studies and assessments; and

(v) Other activities to facilitate Compact implementation as approved by MCC. The allocation of Compact Implementation Funding is generally described in Annex II.

(b) In accordance with Section 7.5, this Section 2.2 and other provisions of this Compact applicable to Compact Implementation Funding shall be effective, for purposes of Compact Implementation Funding only, as of the date this Compact is signed by MCC and the Government.

(c) Each Disbursement of Compact Implementation Funding shall be subject to satisfaction of the conditions precedent to such disbursement as set forth in Annex IV.

(d) If MCC determines that the full amount of Compact Implementation Funding available under Section 2.2(a) exceeds the amount that reasonably can be utilized for the purposes set forth in Section 2.2(a), MCC, by written notice to the Government, may withdraw the excess amount, thereby reducing the amount of the Compact Implementation Funding available under Section 2.2(a) (such excess, the ''*Excess CIF Amount''*). In such event, the amount of Compact Implementation Funding granted to the Government under Section 2.2(a) shall be reduced by the Excess CIF Amount, and MCC shall have no further obligations with respect to such Excess CIF Amount.

(e) MCC, at its option by written notice to the Government, may elect to grant to the Government an amount equal to all or a portion of such Excess CIF Amount as an increase in the Program Funding, and such additional Program Funding shall be subject to the terms and conditions of this Compact applicable to Program Funding.

Section 2.3 MCC Funding

Program Funding and Compact Implementation Funding are collectively referred to in this Compact as ''*MCC Funding,''* and includes any refunds or reimbursements of Program Funding or Compact Implementation Funding paid by the Government in accordance with this Compact.

Section 2.4 Disbursement

In accordance with this Compact and the Program Implementation Agreement, MCC shall disburse MCC Funding for expenditures incurred in furtherance of the Program (each instance, a ''*Disbursement''*). Subject to the satisfaction of all applicable conditions precedent, the proceeds of Disbursements shall be made available to the Government, at MCC's sole election, by (a) deposit to one or more bank accounts established by the Government and acceptable to MCC (each, a ''*Permitted Account''*) or (b) direct payment to the relevant provider of goods, works or services for the implementation of the Program. MCC Funding may be expended only for Program expenditures.

Section 2.5 Interest

The Government shall pay or transfer to MCC, in accordance with the Program Implementation Agreement, any interest or other earnings that accrue on MCC Funding prior to such funding being used for a Program purpose.

Section 2.6 Government Resources; Budget

(a) The Government shall provide all funds and other resources, and shall take all actions, that are necessary to carry out the Government's responsibilities under this Compact.

(b) The Government shall use its best efforts to ensure that all MCC Funding it receives or is projected to receive in each of its fiscal years is fully accounted for in its annual budget on a multi-year basis.

(c) The Government shall not reduce the normal and expected resources that it would otherwise receive or budget from sources other than MCC for the activities contemplated under this Compact and the Program.

(d) Unless the Government discloses otherwise to MCC in writing, MCC Funding shall be in addition to the resources that the Government would otherwise receive or budget for the activities contemplated under this Compact and the Program.

Section 2.7 Limitations on the Use of MCC Funding

The Government shall ensure that MCC Funding is not used for any purpose that would violate United States law or policy, as specified in this Compact or as further notified to the Government in writing or by posting from time to time on the MCC Web site at *www.mcc.gov* (the ''MCC Web site''), including but not limited to the following purposes:

(a) For assistance to, or training of, the military, police, militia, national guard or other quasi-military organization or unit;

(b) For any activity that is likely to cause a substantial loss of United States jobs or a substantial displacement of United States production;

(c) To undertake, fund or otherwise support any activity that is likely to cause a significant environmental, health, or safety hazard, as further described in MCC's Environmental Guidelines and any guidance documents issued in connection with the guidelines posted from time to time on the MCC Web site or otherwise made available to the Government (collectively, the ''*MCC Environmental Guidelines''*); or

(d) To pay for the performance of abortions as a method of family planning or to motivate or coerce any person to practice abortions, to pay for the performance of involuntary sterilizations as a method of family planning or to coerce or provide any financial incentive to any person to undergo sterilizations or to pay for any biomedical research which relates, in whole or in part, to methods of, or the performance of, abortions or involuntary sterilization as a means of family planning.

Section 2.8 Taxes

(a) Unless the Parties specifically agree otherwise in writing, the Government shall ensure that all MCC Funding is free from the payment or imposition of any existing or future taxes, duties, levies or other similar charges (but not fees or charges for services that are generally applicable in Indonesia, reasonable in amount and imposed on a non-discriminatory basis) (''*Taxes''*) in Indonesia (including any such Taxes imposed by a national, regional, local or other governmental or taxing authority in Indonesia) in accordance with prevailing tax laws and regulations in Indonesia. In addition, should any Tax be levied and paid using MCC Funding in accordance with such prevailing tax laws and regulations in Indonesia, such Taxes will be reimbursed in accordance with the Minister of Finance regulation referenced in sub-section (b) below.

Specifically, and without limiting the generality of the foregoing, MCC Funding shall be free from the payment of:

(i) Customs duties, import taxes, and other similar charges on any goods, works or services introduced into Indonesia in connection with the Program;

(ii) Value added tax, sales tax on luxury items, excise tax, property transfer tax, and other similar charges on any transactions involving goods, works or services in connection with the Program;

(iii) Taxes and other similar charges on ownership, possession or use of any property in connection with the Program; and

(iv) Taxes and other similar charges on income, profits or gross receipts attributable to work performed in connection with the Program and related social security taxes and other similar charges on all natural or legal persons performing work in connection with the Program except: (1) Natural persons who are citizens or permanent

residents of Indonesia; and (2) legal persons formed under the laws of Indonesia (but excluding MCA-Indonesia, which is formed for the purpose of implementing the Government's obligations hereunder).

(b)(i) The mechanisms that the Government shall use to implement the tax exemption required by Section 2.8(a) are set forth in the Program Implementation Agreement. Such mechanisms shall include exemptions from the payment of Taxes that have been granted in accordance with applicable law, or reimbursement of Taxes by the Government to MCA-Indonesia or to the taxpayer. In the case of reimbursement, the Minister of Finance shall issue a regulation governing the manner in which such reimbursements shall be implemented.

(ii) For those Taxes for which reimbursement shall be the method of implementation, if a Tax has been paid in accordance with existing Tax laws and regulations, the Government shall reimburse to MCA-Indonesia or the taxpayer an amount equal to the amount of Tax paid in the currency of Indonesia within thirty (30) working days (or such other period as may be agreed in writing by the Parties) after the fulfillment of all required documentation by MCA-Indonesia.

(c) If a Tax has been paid contrary to the requirements of Sections 2.8(a) or (b) or the Program Implementation Agreement, or if a reimbursement has not been properly issued in accordance with Section 2.8(b)(ii) or the Program Implementation Agreement, the Government shall reimburse promptly to MCC (or if directed by MCC, to MCA-Indonesia) the amount of such Tax in United States dollars or the currency of Indonesia within thirty (30) days (or such other period as may be agreed in writing by the Parties) after the Government is notified in writing (whether by MCC or MCA-Indonesia) attaching the relevant documents evidencing that such Tax has been paid.

(d) No MCC Funding, proceeds thereof or Program Assets may be applied by the Government in satisfaction of its obligations under Section 2.8(c).

Article 3. Implementation

Section 3.1 Program Implementation Agreement

The Parties shall enter into an agreement providing further detail on the implementation arrangements, fiscal accountability and disbursement and use of MCC Funding, among other matters (the ''*Program Implementation Agreement''* or ''PIA''); and the Government shall implement the Program in accordance with this Compact, the PIA, any Supplemental Agreement and any Implementation Letter.

Section 3.2 Government Responsibilities

(a) The Government has principal responsibility for overseeing and managing the implementation of the Program.

(b) With the prior written consent of MCC, the Government may designate an entity to be established through passage of a ministerial decree or other legal instrument acceptable to MCC and its implementing regulation (together, the ''Establishment Decree''), as the accountable entity to implement the Program and to exercise and perform the Government's right and obligation to oversee, manage and implement the Program, including without limitation, managing the implementation of Projects and their Activities, allocating resources and managing procurements. Such entity is referred to herein as ''*MCA-Indonesia,''* and will have the authority to bind the Government with regard to all Program activities. The designation contemplated by this Section 3.2(b) shall not relieve the Government of any obligations or responsibilities hereunder or under any related agreement, for which the Government remains fully responsible. MCC hereby acknowledges and consents to the designation in this Section 3.2(b).

(c) The Government shall ensure that any Program Assets or services funded in whole or in part (directly or indirectly) by MCC Funding are used solely in furtherance of this Compact and the Program unless MCC agrees otherwise in writing.

(d) The Government shall take all necessary or appropriate steps to achieve the Project Objectives during the Compact Term (including, without limiting Section 2.6(a), funding all costs that exceed MCC Funding and are required to carry out the terms hereof and achieve such objectives, unless MCC agrees otherwise in writing).

(e) The Government shall fully comply with the Program Guidelines, as applicable, in its implementation of the Program.

(f) The Government shall grant to MCC a perpetual, irrevocable, royalty-free, worldwide, fully paid, assignable right and license to practice or have practiced on its behalf (including the right to produce, reproduce, publish, repurpose, use, store, modify, or make available) any portion or portions of Intellectual Property as MCC sees fit in any medium, now known or hereafter developed, for any purpose whatsoever.

Section 3.3 Policy Performance

In addition to undertaking the specific policy, legal and regulatory reform commitments identified in Annex I (if any), the Government shall seek to maintain and to improve its level of performance under the policy criteria identified in Section 607 of the MCA Act, and the selection criteria and methodology used by MCC.

Section 3.4 Accuracy of Information

The Government assures MCC that, as of the date this Compact is signed by the Government, the information provided to MCC by or on behalf of the Government in the course of reaching agreement with MCC on this Compact is true, correct and complete in all material respects.

Section 3.5 Implementation Letters

From time to time, MCC may provide guidance to the Government in writing on any matters relating to this Compact, MCC Funding or implementation of the Program (each, an ''*Implementation Letter''*). The Government shall apply such guidance in implementing the Program. The Parties may also issue jointly agreed-upon Implementation Letters to confirm and record their mutual understanding on aspects related to the implementation of this Compact, the PIA or other related agreements.

Section 3.6 Procurement and Grants

(a) Notwithstanding the Government's commitment to procurement reform as demonstrated by Indonesian law, the Government shall ensure that the procurement of all goods, works and services by the Government or any Provider to implement the Program shall be consistent with the ''MCC Program Procurement Guidelines'' posted from time to time on the MCC Web site (the ''*MCC Program Procurement Guidelines''*). The MCC Program Procurement Guidelines include the following requirements, among others:

(i) Open, fair, and competitive procedures must be used in a transparent manner to solicit, award and administer contracts and to procure goods, works and services;

(ii) Solicitations for goods, works, and services must be based upon a clear and accurate description of the goods, works and services to be acquired;

(iii) Contracts must be awarded only to qualified contractors that have the capability and willingness to perform the contracts in accordance with their

terms on a cost effective and timely basis; and

(iv) No more than a commercially reasonable price, as determined, for example, by a comparison of price quotations and market prices, shall be paid to procure goods, works and services.

(b) The Government shall ensure that any grant issued to any non-governmental entity in furtherance of the Program (the ''*Grant*'') is selected, implemented and administered pursuant to open, fair, and competitive procedures administered in a transparent manner. In furtherance of this requirement, and prior to the issuance of any Grant, the Government and MCC shall agree upon written procedures to govern the identification of potential recipients, the selection and the award of Grants. Such agreed procedures shall be posted on the MCA-Indonesia Web site.

Section 3.7 Records; Accounting; Covered Providers; Access

(a) Government Books and Records. The Government shall maintain, and shall use its best efforts to ensure that all Covered Providers maintain, accounting books, records, documents and other evidence relating to the Program adequate to show, to MCC's satisfaction, the use of all MCC Funding and the implementation and results of the Program (''Compact Records''). In addition, the Government shall furnish or cause to be furnished to MCC, upon its request, originals or copies of such Compact Records.

(b) Accounting. The Government shall maintain and shall use its best efforts to ensure that all Covered Providers maintain Compact Records in accordance with generally accepted accounting principles prevailing in the United States, or at the Government's option and with MCC's prior written approval, other accounting principles, such as those: (i) Prescribed by the International Accounting Standards Board; or (ii) then prevailing in Indonesia. Compact Records shall be maintained for at least five (5) years after the end of the Compact Term or for such longer period, if any, required to resolve any litigation, claims or audit findings or any applicable legal requirements.

(c) Providers and Covered Providers. Unless the Parties agree otherwise in writing, a ''*Provider*'' is (i) any entity of the Government that receives or uses MCC Funding or any other Program Asset in carrying out activities in furtherance of this Compact or (ii) any third party that receives at least US$50,000 in the aggregate of MCC Funding (other than as salary or compensation as an employee of an entity of the Government) during the Compact Term. A ''*Covered Provider*'' is: (i) A non-United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$300,000 or more of MCC Funding in any Government fiscal year or any other non-United States person or entity that receives, directly or indirectly, US$300,000 or more of MCC Funding from any Provider in such fiscal year; or (ii) any United States Provider that receives (other than pursuant to a direct contract or agreement with MCC) US$500,000 or more of MCC Funding in any Government fiscal year or any other United States person or entity that receives, directly or indirectly, US$500,000 or more of MCC Funding from any Provider in such fiscal year.

(d) Access. Upon MCC's request, the Government, at all reasonable times, shall permit, or cause to be permitted, authorized representatives of MCC, an authorized Inspector General of MCC (''*Inspector General*''), the United States Government Accountability Office, any auditor responsible for an audit contemplated herein or otherwise conducted in furtherance of this Compact, and any agents or representatives engaged by MCC or the Government to conduct any assessment, review or evaluation of the Program, the opportunity to audit, review, evaluate or inspect facilities, assets and activities funded in whole or in part by MCC Funding.

Section 3.8 Audits; Reviews

(a) Government Audits. Except as the Parties may agree otherwise in writing, the Government shall, on at least a semi-annual basis, conduct, or cause to be conducted, financial audits of all disbursements of MCC Funding covering the period from signing of this Compact until the earlier of the following December 31 or June 30 and covering each six-month period thereafter ending December 31 and June 30, through the end of the Compact Term. In addition, upon MCC's request, the Government shall ensure that such audits are conducted by an independent auditor approved by MCC and named on the list of local auditors approved by the Inspector General or a United States-based certified public accounting firm selected in accordance with the ''Guidelines for Financial Audits Contracted by MCA'' (the ''*Audit Guidelines*'') issued and revised from time to time by the Inspector General, which are posted on the MCC Web site. Audits shall be performed in accordance with the Audit Guidelines and be subject to quality assurance oversight by the Inspector General. Each audit shall be completed and the audit report delivered to MCC no later than 90 days after the first period to be audited and no later than 90 days after each June 30 and December 31 thereafter, or such other period as the Parties may otherwise agree in writing.

(b) Audits of Other Entities. The Government shall ensure that MCC financed agreements between the Government or any Provider, on the one hand, and (i) a United States nonprofit organization, on the other hand, state that the United States nonprofit organization is subject to the applicable audit requirements contained in OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations,'' issued by the United States Office of Management and Budget; (ii) a United States for-profit Covered Provider, on the other hand, state that the United States for-profit organization is subject to audit by the applicable United States Government agency, unless the Government and MCC agree otherwise in writing; and (iii) a non-U.S. Covered Provider, on the other hand, state that the non-U.S. Covered Provider is subject to audit in accordance with the Audit Guidelines.

(c) Corrective Actions. The Government shall use its best efforts to ensure that each Covered Provider: (i) Takes, where necessary, appropriate and timely corrective actions in response to audits; (ii) considers whether the results of the Covered Provider's audit necessitates adjustment of the Government's records; and (iii) permits independent auditors to have access to its records and financial statements as necessary.

(d) Audit by MCC. MCC shall have the right to arrange for audits of the Government's use of MCC Funding.

(e) Cost of Audits, Reviews or Evaluations. MCC Funding may be used to fund the costs of any audits, reviews or evaluations required under this Compact.

Article 4. Communications

Section 4.1 Communications

Any document or communication required or submitted by either Party to the other under this Compact shall be in writing and, except as otherwise agreed with MCC, in English. For this purpose, the address of each Party is set forth below.

To MCC:

Millennium Challenge Corporation, Attention: Vice President, Department of Compact Operations, (with a copy to the Vice President and General

Counsel), 875 Fifteenth Street NW., Washington, DC 20005, United States of America, *Facsimile:* +1 (202) 521–3700, *Telephone:* +1 (202) 521–3600, *Email: VPOperations@mcc.gov:* (Vice President, Compact Operations), *VPGeneralCounsel@mcc.gov* (Vice President and General Counsel)

To the Government:

Ministry of National Development Planning/National Development Planning Agency (BAPPENAS), Attention: Vice Minister of National Development Planning, Jalan Taman Suropati 2, Jakarta Pusat 10310, Republic of Indonesia, *Facsimile:* +62 (21) 3103314, *Telephone:* +62 (21) 336207, 3905650

To MCA-Indonesia:

Upon establishment of MCA-Indonesia, MCA-Indonesia will notify the Parties of its contact details.

Section 4.2 Representatives

For all purposes of this Compact, the Government shall be represented by the individual holding the position of, or acting as, Vice Minister of National Development Planning (BAPPENAS) of the Republic of Indonesia, and MCC shall be represented by the individual holding the position of, or acting as, Vice President, Department of Compact Operations (each of the foregoing, a ''*Principal Representative''*). Each Party, by written notice to the other Party, may designate one or more additional representatives (each, an ''*Additional Representative''*) for all purposes other than signing amendments to this Compact. The Government hereby designates the Chairman of MCA-Indonesia as an Additional Representative. MCC hereby designates the Deputy Vice President, Department of Compact Operations, Europe, Asia, Pacific and Latin America, as an Additional Representative. A Party may change its Principal Representative to a new representative that holds a position of equal or higher authority upon written notice to the other Party.

Section 4.3 Signatures

Signatures to this Compact and to any amendment to this Compact shall be original signatures appearing on the same page or in an exchange of letters or diplomatic notes. With respect to all documents arising out of this Compact (other than the Program Implementation Agreement) and amendments thereto, signatures may be delivered by facsimile or electronic mail and in counterparts and shall be binding on the Party delivering such signature to the same extent as an original signature would be.

Article 5. Termination; Suspension; Expiration

Section 5.1 Termination; Suspension

(a) Either Party may terminate this Compact without cause in its entirety by giving the other Party thirty (30) days' prior written notice. MCC may also terminate this Compact or MCC Funding without cause in part by giving the Government thirty (30) days' prior written notice.

(b) MCC may, immediately, upon written notice to the Government, suspend or terminate this Compact or MCC Funding, in whole or in part, and any obligation related thereto, if MCC determines that any circumstance identified by MCC as a basis for suspension or termination (whether in writing to the Government or by posting on the MCC Web site) has occurred, which circumstances include but are not limited to the following:

(i) The Government fails to comply with its obligations under this Compact or any other agreement or arrangement entered into by the Government in connection with this Compact or the Program;

(ii) An event or series of events has occurred that makes it probable that any of the Project Objectives will not be achieved during the Compact Term or that the Government will not be able to perform its obligations under this Compact;

(iii) A use of MCC Funding or continued implementation of this Compact or the Program violates applicable law or United States Government policy;

(iv) The Government or any other person or entity receiving MCC Funding or using Program Assets is engaged in activities that are contrary to the national security interests of the United States;

(v) An act has been committed or an omission or an event has occurred that would render Indonesia ineligible to receive United States economic assistance under Part I of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2151 *et seq.*), by reason of the application of any provision of such act or any other provision of law;

(vi) The Government has engaged in a pattern of actions inconsistent with the criteria used to determine the eligibility of Indonesia for assistance under the MCA Act; and

(vii) The Government or another person or entity receiving MCC Funding or using Program Assets is found to have been convicted of a narcotics offense or to have been engaged in drug trafficking.

Section 5.2 Consequences of Termination, Suspension or Expiration

(a) Upon the suspension or termination, in whole or in part, of this Compact or any MCC Funding, or upon the expiration of this Compact, the provisions of Section 4.2 of the Program Implementation Agreement shall govern the post-suspension, post-termination or post-expiration treatment of MCC Funding, any related Disbursements and Program Assets. Any portion of this Compact, MCC Funding, the Program Implementation Agreement or any other Supplemental Agreement that is not suspended or terminated shall remain in full force and effect.

(b) MCC may reinstate any suspended or terminated MCC Funding under this Compact if MCC determines that the Government or other relevant person or entity has committed to correct each condition for which MCC Funding was suspended or terminated.

Section 5.3 Refunds; Violation

(a) If any MCC Funding, any interest or earnings thereon, or any Program Asset is used for any purpose in violation of the terms of this Compact, then MCC may require the Government to repay to MCC in United States Dollars the value of the misused MCC Funding, interest, earnings, or asset, plus interest within thirty (30) days after the Government's receipt of MCC's request for repayment. The Government shall not use MCC Funding, proceeds thereof or Program Assets to make such payment.

(b) Notwithstanding any other provision in this Compact or any other existing agreement to the contrary, MCC's right under Section 5.3(a) to obtain a refund shall continue during the Compact Term and for a period of (i) five (5) years thereafter or (ii) one (1) year after MCC receives actual knowledge of such violation, whichever is later.

Section 5.4 Survival

The Government's responsibilities under Sections 2.7, 3.7, 3.8, 5.2, 5.3, and 6.4 shall survive the expiration, suspension or termination of this Compact.

Article 6. Compact Annexes; Amendments; Governing Law

Section 6.1 Annexes

Each annex to this Compact constitutes an integral part hereof, and references to ''Annex'' mean an annex to this Compact unless otherwise expressly stated.

Section 6.2 Amendments

(a) The Parties may amend this Compact only by a written agreement signed by the Principal Representatives (or such other government official designated by the Principal Representative, provided prior notice is given to the other Party).

(b) Notwithstanding Section 6.2(a), the Parties may agree in writing, signed by the Principal Representatives (or such other government official designated by the Principal Representative, provided prior notice is given to the other Party) or any Additional Representative, to modify any Annex to: (i) Suspend, terminate or modify any Project or Activity, or to create a new project; (ii) change the allocations of funds as set forth in Annex II as of the date hereof (including to allocate funds to a new project); (iii) modify the Implementation Framework described in Annex I; or (iv) add, delete or waive any condition precedent described in Annex IV; *provided that,* in each case, any such modification: (1) Is consistent in all material respects with the Project Objectives; (2) does not cause the amount of Program Funding to exceed the aggregate amount specified in Section 2.1 (as may be modified by operation of Section 2.2(e)); (3) does not cause the amount of Compact Implementation Funding to exceed the aggregate amount specified in Section 2.2(a); (4) does not reduce the Government's responsibilities or contribution of resources required under Section 2.6; and (5) does not extend the Compact Term.

Section 6.3 Inconsistencies

In the event of any conflict or inconsistency between:

(a) any Annex and any of Articles 1 through 7, such Articles 1 through 7, as applicable, will prevail; or

(b) this Compact and any other agreement between the Parties regarding the Program, this Compact will prevail.

Section 6.4 Governing Law

This Compact is an international agreement and as such shall be governed by the principles of international law.

Section 6.5 Additional Instruments

Any reference to activities, obligations or rights undertaken or existing under or in furtherance of this Compact or similar language shall include activities, obligations and rights undertaken by, or existing under or in furtherance of any agreement, document or instrument related to this Compact and the Program.

Section 6.6 References to MCC Web Site

Any reference in this Compact, the PIA or any other agreement entered into in connection with this Compact, to a document or information available on, or notified by posting on the MCC Web site shall be deemed a reference to such document or information as updated or substituted on the MCC Web site from time to time.

Section 6.7 References to Laws, Regulations, Policies and Guidelines

Each reference in this Compact, the PIA or any other agreement entered into in connection with this Compact, to a law, regulation, policy, guideline or similar document shall be construed as a reference to such law, regulation, policy, guideline or similar document as it may, from time to time, be amended, revised, replaced, or extended and shall include any law, regulation, policy, guideline or similar document issued under or otherwise applicable or related to such law, regulation, policy, guideline or similar document.

Section 6.8 MCC Status

MCC is a United States government corporation acting on behalf of the United States Government in the implementation of this Compact. MCC and the United States Government assume no liability for any claims or loss arising out of activities or omissions under this Compact. The Government waives any and all claims against MCC or the United States Government or any current or former officer or employee of MCC or the United States Government for all loss, damage, injury, or death arising out of activities or omissions under this Compact, and agrees that it will not bring any claim or legal proceeding of any kind against any of the above entities or persons for any such loss, damage, injury, or death. The Government agrees that MCC and the United States Government or any current or former officer or employee of MCC or the United States Government will be immune from the jurisdiction of all courts and tribunals of Indonesia for any claim or loss arising out of activities or omissions under this Compact.

Section 6.9 Consultations

Either Party may, at any time, request consultations relating to the interpretation or implementation of this Compact. Such consultations will begin at the earliest possible date.

Article 7. Entry Into Force

Section 7.1 Domestic Requirements

Before this Compact enters into force, the Government shall proceed in a timely manner to complete all of its domestic requirements necessary for this Compact and the PIA to enter into force as an international agreement.

Section 7.2 Conditions Precedent to Entry Into Force

Before this Compact enters into force:

(a) The PIA shall have been signed by the parties thereto;

(b) The Government shall have delivered to MCC:

(i) A letter signed and dated by the Principal Representative of the Government, or such other duly authorized representative of the Government acceptable to MCC, confirming that the Government has completed its domestic requirements necessary for this Compact to enter into force and that the other conditions precedent to entry into force in this Section 7.2 have been met;

(ii) A signed legal opinion from the Minister of Law and Human Rights of Indonesia (or such other legal representative of the Government acceptable to MCC), in form and substance satisfactory to MCC; and

(iii) Complete, certified copies of all decrees, legislation, regulations or other governmental documents relating to the Government's domestic requirements necessary for this Compact to enter into force and the satisfaction of Section 7.1, which MCC may post on its Web site or otherwise make publicly available;

(c) MCC shall not have determined that after signature of this Compact, the Government has engaged in a pattern of actions inconsistent with the eligibility criteria for MCC Funding;

(d) Annex III shall have been modified by the Parties to reflect final Indicators and Targets (as such are defined in Annex III) for each Project; and

(e) The Government shall ensure either: (i) That the PSF (as defined in Schedule 2 to Annex I) is extended through the end of the Compact Term; or (ii) the Government provides an alternative implementation structure acceptable to MCC, together with a timeline for transition of the management of the Community-Based Nutrition Project.

Section 7.3 Date of Entry Into Force

This Compact shall enter into force on the date of the letter from MCC to the Government in an exchange of letters confirming that MCC has completed its domestic requirements for entry into

force of this Compact and that the conditions precedent to entry into force in Section 7.2 have been met.

Section 7.4 Compact Term

This Compact shall remain in force for five (5) years after its entry into force, unless terminated earlier under Section 5.1 (the ''*Compact Term''*).

Section 7.5 Provisional Application

Upon signature of this Compact and until this Compact has entered into force in accordance with Section 7.3, the Parties shall provisionally apply the terms of this Compact; *provided that,* no MCC Funding, other than Compact Implementation Funding, shall be made available or disbursed before this Compact enters into force.

In Witness Whereof, the undersigned, duly authorized by their respective governments, have signed this Compact.

Done at Bali, Indonesia, this 19th day of November, 2011, in the English language only.

For the United States of America, Name: Hillary Rodham Clinton, Title: Secretary of State and Chair, Board of Directors, Millennium Challenge Corporation.

For the Republic of Indonesia, Name: Agus D.W. Martowardojo, Title: Minister of Finance.

Annex I: Program Description

This Annex I describes the Program that MCC Funding will support in Indonesia during the Compact Term.

A. Program Overview

1. Background and Consultative Process

(a) Background.

Indonesia was selected by MCC's Board of Directors as eligible for a compact in December 2008. MCC recognized that in spite of a crowded field of other development partners, MCC's business model offered the Government new opportunities to approach persistent development problems using new approaches. The Government, through the National Development Planning/National Development Planning Agency (''*BAPPENAS''*), appointed a national program coordinator in June 2009. The results of an interim constraints analysis funded by the Asian Development Bank, the International Labour Organization, and the Islamic Development Bank became available in November 2009, with the final report published in August 2010.

In mid-September 2009, BAPPENAS issued two ministerial decrees to establish the *Tim Pengarah* or Steering Committee (''SC''), made up of high-ranking Indonesian officials and members of civil society, academia, and the private sector that would coordinate the MCC compact development process, supported by two other coordinating teams. BAPPENAS then hired a fourth team, *Tim Ahli* (experts team), to do the work that MCC associates with the core team in other countries, guiding and assisting with concept paper development and due diligence. The SC, supported by *Tim Ahli,* produced a foundational document describing priority areas for MCC investment.

(b) Consultative Process.

To formulate initial project concept proposals, BAPPENAS engaged in an inclusive consultative process, holding consultations in several regions across Indonesia and inspiring praise within the donor community in Indonesia. The SC led a process to solicit and then select from nearly 400 concept papers, and BAPPENAS formally submitted 13 concept papers to MCC in June 2010.

2. Description of Program and Beneficiaries

(a) Description.

The Program consists of three Projects: Community-Based Health and Nutrition to Reduce Stunting, Green Prosperity and Procurement Modernization. These Projects respond to constraints to economic growth and were highlighted as priorities in the Government's national development strategies.

Each Project is generally described in the Schedules to this Annex I. The Schedules to this Annex I also identify one or more of the activities that will be undertaken in furtherance of each Project (each, an ''*Activity''*) as well as the various sub-activities within each Project Activity.

(b) Beneficiaries.

While Indonesia is a relatively new democracy, much has been achieved over the past decade. The country has seen positive economic growth, witnessed large reductions in poverty, and has made continued progress towards many of its Millennium Development Goal targets for 2015. However, in spite of this progress, over 32 million Indonesians live near the national poverty line and approximately half of all households remain clustered around the national poverty line set at 200,262 rupiah per person per month (US$23 as of August 2011). The pace of poverty reduction has slowed and the poverty incidence in 2009 was only 3.5 percentage points lower than that in 1996. Meanwhile, many of the critical institutional challenges of reform have not yet been addressed. Decentralization was intended to bring government closer to the people, but in many places local leaders assign a low priority to the delivery of social services and investments in essential infrastructure, both of which are emerging as important constraints on the country's continuing economic growth.

Each Project of the Compact is intended to further poverty reduction through economic growth. Specific beneficiaries are identified as part of the Project description in each Schedule to this Annex I.

3. Environmental and Social Safeguards

All of the Projects will be implemented in compliance with the MCC Environmental Guidelines and the MCC Gender Policy, and any resettlement will be carried out in accordance with the World Bank's Operational Policy on Involuntary Resettlement in effect as of July 2007 (''OP 4.12'') in a manner acceptable to MCC. In accordance with its policies, the Government will ensure that the Projects comply with all national environmental laws and regulations, licenses and permits, except to the extent such compliance would be inconsistent with this Compact. Specifically, the Government will: (a) Cooperate with or complete, as the case may be, any ongoing environmental assessments, or if necessary undertake and complete any additional environmental assessments, social assessments, environmental management plans, environmental and social audits, resettlement policy frameworks, and resettlement action plans required under the laws of Indonesia, the MCC Environmental Guidelines, this Compact, the PIA, or any Supplemental Agreement, or as otherwise required by MCC, each in form and substance satisfactory to MCC; (b) ensure that Project-specific environmental and social management plans are developed and all relevant measures contained in such plans are integrated into project design, the applicable procurement documents and associated finalized contracts, in each case, in form and substance satisfactory to MCC; and (c) implement to MCC's satisfaction appropriate environmental and social mitigation measures identified in such assessments or plans. Unless MCC agrees otherwise in writing, the Government will fund all necessary costs of environmental and social mitigation measures (including, without limitation, costs of resettlement) not specifically provided for, or that exceed the MCC Funding specifically allocated for such costs in, the Detailed Financial Plan for any Project.

To maximize the positive social impacts of the Projects, address cross-

cutting social and gender issues such as human trafficking, child and forced labor, and HIV/AIDS, and to ensure compliance with the MCC Gender Policy, the Government will: (x) Develop a comprehensive social and gender integration plan which, at a minimum, identifies approaches for regular, meaningful and inclusive consultations with women and other vulnerable/underrepresented groups, consolidates the findings and recommendations of Project-specific social and gender analyses and sets forth strategies for incorporating findings of the social and gender analyses into final Project designs as appropriate (''*Social and Gender Integration Plan*''); and (y) ensure, through monitoring and coordination during implementation, that final Activity designs, construction tender documents and implementation plans are consistent with and incorporate the outcomes of the social and gender analyses and social and gender integration plan.

To address gender concerns that impact women's ability to participate across Projects, MCA-Indonesia will adopt a detailed workplan, subject to MCC approval, for gender work to be undertaken at the policy, institutional capacity building and community levels (the ''*Targeted Gender Activities*''). Annex II sets forth the MCC Funding allocated for the performance of the Targeted Gender Activities. Prior to the second disbursement of MCC Funding for the Targeted Gender Activities, MCA-Indonesia shall have completed detailed action plans and provided evidence of demonstrated commitment of relevant stakeholders to addressing policy constraints identified in the workplan.

B. Description of Projects

Set forth in the attached Schedules is a description of each of the Projects that the Government will implement, or cause to be implemented, using MCC Funding to advance the applicable Project Objective. In addition, specific activities that will be undertaken within each Project, including sub-activities, are also described.

C. Implementation Framework

1. Accountable Entity: General

Unless otherwise agreed by MCC, MCA-Indonesia will be a trust fund entity established under the authority contemplated by the forthcoming Presidential regulation (*Peraturan Presiden*) regarding the establishment of trust funds and a subsequent ministerial decree (*Peraturan Menteri Negara*) creating MCA-Indonesia. MCA-Indonesia will have the primary purpose of acting as the Government's primary agent to implement the Program and perform the Government's right and obligation to oversee, manage and implement the Program.

2. Board of Trustees

MCA-Indonesia will be governed by a Board of Trustees (''Board''). The Board will have independent decision making authority and will have ultimate authority and responsibility for the oversight, direction and decisions of MCA-Indonesia, and for the overall implementation of the Program in accordance with this Compact, the Program Implementation Agreement and all Supplemental Agreements. The Board will be comprised of voting and non-voting members as set forth in the implementing regulations of MCA-Indonesia (''*Implementing Regulations*'').

3. Implementing Team

An implementing team (''*Implementing Team*'') will have the principal responsibility (subject to the direction and oversight of the Board and to any applicable approval or other rights of MCC) for the day-to-day management of the Program, including those roles and responsibilities specifically set forth in the Program Implementation Agreement. The specific duties of the Implementing Team are set forth in the Implementing Regulations.

4. Stakeholders Groups

MCA-Indonesia will include one (1) or more stakeholders groups (each a ''Stakeholders Group'' and together the ''*Stakeholders Groups*'') to provide advice and input to MCA-Indonesia and to disseminate information concerning Compact implementation to the public. Each such Stakeholders Group shall represent the constituencies of the various Projects. The role and responsibilities of the Stakeholders Groups are as set forth in the Implementing Regulations.

5. Implementing Entities

Subject to the terms and conditions of this Compact and any other related agreement entered into in connection with this Compact, the Government may engage one or more entities of the Government to implement and carry out any Project or Activity (or a component thereof) to be carried out in furtherance of this Compact (each, an ''*Implementing Entity*''). The appointment of any Implementing Entity will be subject to review and approval by MCC. The Government will ensure that the roles and responsibilities of each Implementing Entity and other appropriate terms are set forth in an agreement, in form and substance satisfactory to MCC (each an ''Implementing Entity Agreement'').

6. Fiscal Agent

Unless MCC agrees otherwise in writing, the Government will engage a fiscal agent (a ''*Fiscal Agent*''), which will be responsible for assisting the Government with its fiscal management and assuring appropriate fiscal accountability of MCC Funding, and whose duties will include those set forth in the Program Implementation Agreement.

7. Procurement Agent

Unless MCC agrees otherwise in writing, the Government will engage one or more procurement agents (each, a ''*Procurement Agent*'') to carry out and certify specified procurement activities in furtherance of this Compact. The roles and responsibilities of each Procurement Agent will be set forth in the Program Implementation Agreement or such agreement as the Government enters into with each Procurement Agent, which agreement will be in form and substance satisfactory to MCC. Each Procurement Agent will adhere to the procurement standards set forth in the MCC Program Procurement Guidelines and ensure procurements are consistent with the procurement plan adopted by the Government pursuant to the Program Implementation Agreement, unless MCC agrees otherwise in writing.

Schedule 1 to Annex I—Green Prosperity Project

This Schedule 1 generally describes and summarizes the key elements of the project that the Parties intend to implement in furtherance of the Green Prosperity Objective (the ''GP Project'').

1. Summary of Project and Activities

The majority of Indonesia's poor live in rural areas rich in natural resources but over-extraction and inadequate management of these resources compromises Indonesia's ability to sustain high rates of economic growth and reduce poverty. At the same time, it is estimated that over 10,000 villages in Indonesia do not have access to reliable and affordable electricity, and many more rely on expensive diesel generation. Illegal logging, land conversion for agriculture, water pollution, and other unsustainable land use practices are adversely affecting the natural assets that people rely on for their livelihoods and wellbeing.

Indonesia is among the top emitters of greenhouse gases in the world. The majority of greenhouse gas emissions result from deforestation and land use conversion; however, emissions from energy and industrial sources are growing rapidly. The lack of clear data on land resource use and jurisdictional boundaries between villages and districts significantly hinders Government agencies and land use planners from managing critical natural resources effectively. Ultimately, protecting Indonesia's natural resource base in the face of demographic, social, and economic forces requires sustainable and equitable economic alternatives.

The Government is committed to a more sustainable, less carbon intensive future. The Government has made a commitment to reduce greenhouse gas emissions by 26 percent by 2020 while maintaining a target of seven (7) percent annual economic growth. Increasing access to clean and reliable energy in rural areas and improving the stewardship of natural assets are critical priorities to achieving this goal.

The GP Project will promote environmentally sustainable, low carbon economic growth as set forth in the Government's medium- to long-term development plans (RPJP and RPJM), the National Greenhouse Gas Emission Reduction Action Plan (RAN–GRK), and Regional Spatial Plans (RTRW) (each a ''*Plan*''). The GP Project will provide a combination of technical and financial assistance to support rural economic development that raises real incomes of Indonesians in a manner that reduces reliance on fossil fuels, improves land management practices, protects natural capital, and complements efforts to reduce emissions from deforestation and environmental degradation. The GP Project will involve local communities and governments in activities to improve the clarity and implementation of government policies and regulations that support low carbon development, as well as build capacity of local communities in natural resource and environmental management, and will be guided by an integrated river basin management approach.

The centerpiece of the GP Project is a funding facility (the ''*GP Facility*'') that will support investments in two thematic areas: renewable energy and sustainable management of natural resources. These investments are intended to have mutually reinforcing benefits of enhancing sustainable economic growth and social conditions while also reducing Indonesia's carbon footprint and aligning incentives and practices to foster improved environmental stewardship.

The GP Project consists of four Activities:

- Investing in administrative boundary setting, updating and integration of land use inventories and enhancing spatial plans at the district and provincial levels (''*Participatory Land Use Planning Activity*'');
- Provision of technical assistance and project oversight (the ''*Technical Assistance and Oversight Activity*'');
- Financing of low-carbon development projects through the establishment of a funding facility (the ''*GP Facility Activity*''); and
- Provision of technical assistance and support for strengthening local, provincial, and national capacity to drive forward Indonesia's nation-wide low carbon development strategy within the context of the GP Project (''*Green Knowledge Activity*'').

The GP Project will concentrate in provinces and districts which have the highest potential for achieving poverty alleviation and environmental objectives. Candidate provinces include Riau, Jambi, West Sumatra, South Sumatra, Bengkulu, West Sulawesi, South Sulawesi, Southeast Sulawesi, West Kalimantan, East Kalimantan, West Nusatenggara and East Nusatenggara. The Parties agree to start the GP Project in two districts in each of Jambi and West Sulawesi. The inclusion of other provinces and districts in the GP Project after entry into force shall be subject to mutual agreement between the Parties.

In order to facilitate the implementation of the Project, certain of the activities stipulated in subsections (a) and (b) below will be tested in Jambi and West Sulawesi prior to entry into force, subject to the terms and conditions of Section 2.2 of this Compact. After entry into force, the approach stipulated in subsections (a) and (b) may be modified, as may be necessary or appropriate, to reflect lessons learned from the test sites.

Except with respect to the Green Knowledge Activity, which is national in scope, the GP Project will provide funding at the district level, favoring, where possible, contiguous districts within the same river basin. The GP Project will focus funding in districts prioritized by means of a readiness assessment. District selection indicators in such assessment will include poverty levels (income levels and other indicators), renewable energy potential, economic growth potential, governance, forest cover and peatlands under threat of degradation or destruction. The GP Project will only assist those districts which (i) have spatial plans at either the district or provincial level that have been granted substantive approval (*Persetujuan Substansi*) by the *Badan Koordinasi Penataan Ruang Nasional* (BKPRN), (ii) agree to make information on the location of village settlements accessible to the public, (iii) agree to make licensing information related to natural resource use (legally issued licenses and those in process) accessible to the public, and (iv) agree to make the licensing process transparent and accessible. MCA-Indonesia shall enter into agreements with each district specifying these and other matters, and making clear that the failure by any district to comply with its commitments under such an agreement may lead to termination of GP Project investments for that district at any time during the Compact Term. These agreements will specify milestones for the implementation of the Activities (a) through (c) below.

Key implementing partners and project sponsors are expected to include local governments and institutions; private enterprises in the agriculture, forestry, water and energy sectors; financial institutions; small-holder farmers; and local and international civil society organizations.

(a) Participatory Land Use Planning Activity.

The purpose of the Participatory Land Use Planning Activity is to ensure that projects funded by the GP Facility are designed on the basis of accurate and appropriate spatial and land use data and adhere to and reinforce existing national laws, regulations and Plans. The Participatory Land Use Planning Activity also will help strengthen the capacity of local communities and district level institutions to manage their own land and resources. Specifically, MCC Funding will support the procurement of firms or entities to undertake:

(i) Administrative boundary setting, including (1) the location of major and minor settlements within villages, (2) the development of appropriate guidelines for participatory village boundary setting using established Government processes and international best practices, including meaningful involvement of women and disadvantaged groups, and (3) the mapping and demarcation of village boundaries in target subdistricts;

(ii) The updating and integration of land and other natural resource uses, including (1) inventories of existing and pending licenses for land and natural resource use, other use rights, community claims, and select biophysical data, and (2) technical

assistance to relevant Government agencies to help integrate and administer spatial data, including data derived from (i) and (ii)(1), in order to improve their ability to conduct transparent licensing, determine the most effective land use and investments, and make the inventories widely available to the public; and

(iii) The enhancement of district and provincial spatial plans, including reflection of the improved land and natural resource information contained in the land use inventory and boundary setting components above.

(b) Technical Assistance and Oversight Activity.

Technical assistance will be provided by contractors to the GP Facility Manager (defined below), district governments, project sponsors, community groups, and financial institutions in order to prepare low carbon development workplans, consisting of potential projects for funding by the GP Facility or other sources. The contractors shall facilitate the project identification process and help project sponsors prepare funding applications to be submitted to the GP Facility. Such technical assistance will include, as necessary, assistance with analysis, project preparation studies (*e.g.,* feasibility studies, environmental and social assessments, gender assessments, economic analysis, and coordination with PLN and other agencies as necessary) and advice regarding compliance with the Investment Criteria (as defined in subsection (c) below). The GP Project identification and development process will involve significant stakeholder consultations, particularly with prospective project beneficiaries (including women and disadvantaged groups) and sponsors, to ensure that proposed projects are consistent with the Government's vision for community-led development and MCC's basic principle of supporting poverty alleviation through economic growth. Technical assistance also will extend to capacity-building necessary for implementation of proposed projects.

Project sponsors under the Technical Assistance and Oversight Activity that received assistance with the preparation of proposals may submit those proposals for award consideration; however, investment support applications may also be submitted by candidates that have not received such assistance.

(c) GP Facility Activity.

The GP Facility Activity is designed to finance projects in the renewable energy and natural resources management sectors. MCA-Indonesia, through one or more independent facility manager(s) (the ''*GP Facility Manager''*) acceptable to MCC, shall implement the GP Facility. The GP Facility Manager will have an investment committee or the equivalent that will consist of representatives of the GP Facility Manager and MCA-Indonesia. MCA-Indonesia representatives shall include representatives of environmental and social specialists involved in overseeing the GP Project (ESMS disciplines (described below)).

Unless the Parties otherwise agree, the GP Facility will contain two funding windows: (i) A window to finance commercial scale renewable energy investments reflecting the priority of the GP Project and private sector investments in natural resource management; and (ii) a grants window to support community-based, small scale renewable energy and other projects to promote sustainable natural resource management and improve land use practices.

MCA-Indonesia shall develop detailed investment criteria, subject to MCC approval, governing the selection of projects to be financed under the GP Facility (the ''*Investment Criteria''*). The final Investment Criteria will be elaborated during the development of the Operations Manual (defined below).

MCA-Indonesia shall develop an operations manual or manuals (the ''*Operations Manual''*) in form and substance satisfactory to MCC, outlining the rules governing the financial and programmatic operation, including the Investment Criteria, of the GP Facility. The Operations Manual will outline monitoring and reporting procedures to ensure investment objectives are being achieved and to verify compliance with other relevant criteria, including environmental and social safeguard requirements. The Parties further agree that the GP Facility's financial controls will be subject to external audit.

Proposals will be reviewed, ranked and recommended for approval in accordance with the Operations Manual. The Operations Manual shall contain project eligibility criteria reflecting: (i) A minimum economic rate of return (ERR) as defined by the MCC hurdle rate; (ii) a core objective of improving environmental stewardship (as reflecting best practices, and further detailed in Section 3 below); (iii) contribution, directly or indirectly, to the reduction of greenhouse gas emissions; (iv) equal access for women and other vulnerable groups to the project or its benefits; and (v) for commercially viable projects, suitable risk allocations to the parties. In addition, a set of sector-specific investment and eligibility criteria will be developed, including criteria for projects related to renewable energy, natural resource management, land use planning, agriculture, watershed management, forestry, and other livelihoods projects or sectors as agreed by the Parties.

The GP Facility will be governed by and must adhere to rules and procedures documented in the Operations Manual. The capital investments made must be designed to be liquidated, whether by repurchase by the recipient, fulfillment of a note or contract, purchase by third parties, or in another manner, on terms appropriate for a capital investment including the size of planned liquidation payments, and as early as reasonably possible consistent with estimated cash flows of the activity in which the investment is made, all according to terms established at the time of the award and in adherence to the principles outlined in the Operations Manual. At the conclusion of the first year of the Compact Term, and annually thereafter, an assessment will be made and appropriate changes made, if necessary, in the structure and funding of the GP Facility, and the balance of renewable energy, natural resource management, and land use management and agricultural projects.

Unless otherwise agreed by the Parties, prior to the end of the fourth year of the Compact Term, MCA-Indonesia and MCC will complete a plan for the disposition of financial assets generated by the GP Facility Activity. This plan must entail either a liquidation of assets or a program to be managed by a fiduciary agent. The selection of the liquidation agent or fiduciary agent must be completed no later than six months prior to the end of the Compact Term. No financial asset created under the GP Facility Activity during the Compact Term can have an original maturity that is later than the date that is nine years from the date of entry into force. All financial assets must be liquidated or transferred (as per the aforementioned plan) prior to the date that is ten years after the date of entry into force.

(d) Green Knowledge Activity.

The objective of this Activity is to build local, provincial, and national capacity to drive forward Indonesia's nation-wide low carbon development strategy within the context of the GP Project. Specifically, MCC Funding will support:

(i) Capacity building for local and provincial stakeholders to stimulate a shift toward low carbon development

policies in local and provincial governments and to support the sustainability of MCC's investment in the GP Project. More specifically, supported activities include (1) capacity building for local government officials and representatives of civil society in low carbon development strategies, (2) capacity building in green products and green entrepreneurship for small and medium enterprises and cooperatives in local communities, and (3) community learning exchange programs on best GP Project practices.

(ii) Development and improvement of centers of excellence in science and technology related to low carbon development at the regional and national level with an emphasis on renewable energy and closely related areas of natural resource management, and other related activities. More specifically, supported activities include (1) providing technical assistance to establish or strengthen academic programs and/or centers of excellence in renewable energy in qualified local or regional universities and polytechnic and other institutes, (2) providing technical assistance to establish a center of excellence in renewable energy at the national level, (3) providing technical assistance to conduct an assessment and review of the national renewable energy policy, and (4) providing technical assistance to revise and develop a renewable energy master plan.

The implementation strategy of this Activity shall support the overall strategy and objectives of the GP Project. Further implementation details will be elaborated in the Operations Manual.

2. Beneficiaries

The GP Project is expected to affect households and businesses in the targeted districts, primarily through expanded renewable energy and improved natural resource management and use. Improved natural resource use planning at district or provincial levels may also benefit other public or private users who are beyond the GP Project provinces or districts. The Green Knowledge Activity is expected to benefit businesses and households beyond the GP Project provinces or districts.

3. Environmental and Social Mitigation Measures

The environmental screening category for the GP Project is Category D according to MCC Environmental Guidelines because the GP Facility will use MCC Funding to finance subprojects that may potentially result in adverse environmental and social impacts.

To prevent or minimize potential adverse environmental and social impacts resulting from the GP Project investments, this Compact includes strict environmental and social safeguard requirements. An Environmental and Social Management System (''ESMS'') will be designed and established as part of the GP Facility Activity, and appropriately qualified environmental, social and gender specialists will be included within the staffing plans for MCA-Indonesia, consultancy agreements, and implementing entities to ensure proper execution and oversight of safeguard measures. The ESMS will incorporate IFC Performance Standards, the Government's Social and Gender Integration Plan, Indonesian legal requirements, the MCC Environmental Guidelines and the MCC Gender Policy. The ESMS also will incorporate international standards and best practices applicable to specific sectors and industries and important to protecting the rights and interests of local communities.

Additional ESMS safeguard requirements are as follows: (a) Participation of local and national level environmental and social assessment and gender representative(s) on the Stakeholders Group; (b) establishment of environmental and social assessment (''ESA'') safeguard procedures at the district level; (c) a community-based ESA monitoring activity; (d) requirement for GP Project investments to have monitoring and evaluation indicators that address ESA issues, with relevant data to be gender-disaggregated; and (e) a requirement that project specific Environmental and Social Management Plans (ESMPs) be developed as part of the ESMS.

4. Donor Coordination

Many donors are funding activities related to climate change, renewable energy and natural resources management in Indonesia. In order to coordinate those efforts, BAPPENAS chairs the Indonesia Climate Change Coordinating Forum consisting of the Asian Development Bank, the World Bank, USAID, Norway, Germany, Japan International Cooperation Agency, the Australian Agency for International Development (AusAID) and other donors. MCC has engaged with members of that Forum and has designed the GP Project with the Government to be a model that could be replicated by other donors in other provinces. Since the Government agreed to pursue a project in the green prosperity theme in July 2010, MCC has conducted extensive consultations with donors involved in low carbon development in Indonesia, including AusAID, Norway, Germany, the United Kingdom's Department for International Development, Asian Development Bank, United Nations Development Programme and World Bank. In addition, a number of international non-governmental organizations (NGOs), notably those engaged in REDD+ readiness and REDD+ pilot projects in Indonesia, have provided their insights into working at the field level. The GP Project design incorporates key lessons learned from these donors' experiences, most notably the importance of focusing efforts at the district level and integrating low carbon activities in the planning phase and implementation phase within those districts. In addition, the GP Project builds on the extensive gains made by the Government, with support from international donors, in developing low carbon laws, regulations and plans and to assist in the decentralization effort. The GP Project's approach to spatial planning, technical assistance and funding facility creates a framework for collaboration in provinces and districts where there is geographical overlap with other donors.

5. USAID

MCC has been in constant coordination with the United States Agency for International Development (''USAID'') to ensure that the GP Project complements other U.S. Government priorities including the Indonesia Clean Energy Development Project (ICED), the Indonesia Forest and Climate Support Project (IFACS), and Low Emission Development Strategy (LEDS). In addition, MCC will draw upon the work of a U.S. Government expert team consisting of the United States Forest Service (as the lead agency), the United States Geological Survey, and the National Aeronautics and Space Administration to jointly assess needs and develop a program of assistance to create a single authoritative map of Indonesia, starting with forestry and climate change that is consistent with the Geospatial Law of April 2011.

6. Sustainability

The GP Project is supportive of the Government's ongoing decentralization efforts, and in particular will build capacity of local governments to ensure sustainable use of natural resources including activities funded under GP Project. In addition, activities funded under the GP Project will generate economic benefits for participants as an ongoing incentive for continued involvement in renewable energy

investment and sustainable natural resource management.

7. Policy, Legal and Regulatory Reforms

The Parties agree that implementation by the Government of the policy, legal and regulatory reforms described below in items (a) through (d) are necessary to fully achieve the objectives of the GP Project:

(a) The Government agrees that the Ministry of Energy and Mineral Resources (''ESDM''), in collaboration with stakeholders in the private sector and NGOs shall develop and adopt a feed-in-tariff (''FIT'') applicable to biomass, solar and other renewable energy projects (non-hydro renewable energy projects). The FIT shall provide a reasonable incentive for independent power producers to develop and sell power to PLN. ESDM and PLN shall adopt and put in place any legal and institutional framework necessary to implement the FIT.

(b) The Government agrees to the issuance of the relevant decrees/regulations for the implementation of the Electricity Law of 2009 (Law 30/2009) in order to create the conditions for assistance to any on-grid renewable energy project.

(c) PLN shall issue the following (i) standard, transparent procedures for structuring and executing transactions involving independent power producers, (ii) a standard bankable power purchase agreement for small-scale renewable power producers by technology type; and (iii) standardized application procedures for renewable energy project developers.

(d) The Government shall consolidate the existing renewable energy master plans of PLN and the Directorate General of New Renewable Energy and Energy Conservation of ESDM into a single, national GIS-based database/inventory platform of (a) renewable energy resources, and (b) current and planned installation of renewable energy projects. The database shall have an initial focus on biomass, small hydropower with capacity of 0.5–10 MW, and solar power generation projects.

In addition, the following shall constitute a condition precedent to initial Disbursement of the GP Facility:

MCA-Indonesia shall have designed and established an ESMS consistent with the requirements of Section 3 of this Schedule, and reflected applicable requirements of this Schedule 1 in the Operations Manual.

Schedule 2 to Annex I—Community-Based Health and Nutrition to Reduce Stunting Project

This Schedule 2 generally describes and summarizes the key elements of the project that the Parties intend to implement in furtherance of the Nutrition Objective (the ''Community-Based Nutrition Project'').

1. Summary of Project and Activities

Over the past decade the Indonesian economy has experienced positive economic growth, witnessed large reductions in poverty, and has made continued progress towards many of its Millennium Development Goal targets for 2015. In spite of this progress, over 30 million Indonesians live below the poverty line (US$2 per day) and half of all households are clustered around the poverty line, which makes them highly vulnerable to income shocks. Of the poor, 65 percent currently live in rural areas. While Indonesia has already met and surpassed targeted reductions in the number of underweight children under five years old to below 18 percent and is on track to meeting its targets for reducing overall child mortality, other indicators of malnutrition should be considered. In particular, low height for age, more commonly known as stunting, reflects the cumulative effects of intergenerational poverty, poor maternal and early childhood nutrition and repeated childhood episodes of illness. It also reflects insufficient household purchasing power and poor access to education, housing, sanitation, and health services.

After two years of age, the effects of early stunting are practically irreversible and have a life-long impact on an individual's cognitive development and productivity. Stunting is also largely accepted as one of the best predictors of future productivity, as stunted children are at a higher risk of experiencing chronic disease, delayed cognitive development, delayed enrollment in school, and reductions in academic achievement and future earning potential. Currently, it is estimated that 37 percent of children, or one out of every three children under five in Indonesia, is shorter than the standard height for their age.

The objective of the Community-Based Nutrition Project is to reduce and prevent low birth weight and childhood stunting and malnourishment of children in project areas, and to increase household income through cost savings, productivity growth and higher lifetime earnings. An additional purpose of the Community-Based Nutrition Project is to determine the effectiveness of the use of MCC Funding in a multi-donor trust fund managed by a multilateral institution and its impact on poverty reduction.

The Community Based-Nutrition Project builds on and utilizes a community engagement implementing mechanism of block grants already tested under a Ministry of Home Affairs (''*MOHA''*) community-driven development program pilot, Generasi (''*Generasi''*), implemented with assistance of the World Bank managed PNPM support fund (''PSF''). The Generasi pilot successfully supported communities in improving targeted health, nutrition and education indicators. As a condition to MCC Funding, Generasi community indicators will be revised and indicators for Service Providers (as defined below) added, to obtain stronger nutrition and stunting outcomes, and strengthen its focus on gender equality following an initial rigorous evaluation. This revised program is known as ''*Generasi Plus.''*

In addition to enhanced training and capacity building, Generasi Plus will employ a series of social accountability and incentive mechanisms in order to ensure that healthcare and sanitation service providers at the district, sub-district and community levels (the ''*Service Providers''*) provide adequate supplies and coverage of stunting prevention services to communities. These mechanisms constitute a ''supply-side'' strengthening approach to focus on preventing childhood stunting through enhanced maternal and child health services, nutrition and sanitation behavior change, shared parenting and nutrition education, and women's empowerment strategies.

Except for the private sector response sub-activity outlined in subsection (b)(ii) below, Activities under the Community-Based Nutrition Project will be implemented by the PSF or a related mechanism acceptable to the Parties. MCA-Indonesia (or such other Government entity as may be agreed by the Parties) will execute a transfer agreement with the World Bank outlining the terms and conditions of MCA-Indonesia's funding of and participation in the PSF (the ''*Transfer Agreement''*). The Transfer Agreement will be consistent with this Compact and will be subject to MCC approval.

The Community-Based Nutrition Project consists of the following three Activities:

- The financing of community block grants and participatory technical assistance to communities (the ''*Community Projects Activity''*);
- The financing of training to Service Providers, sanitation and hygiene

activities, provision of multiple micronutrient packets, materials to measure children's height, and other incentives, as well as private sector interventions (the ''*Supply Side Activity''*); and

• The financing of communications outreach, project management and monitoring and evaluation (the ''*Communications, Project Management and Evaluation Activity''*).

(a) Community Projects Activity.

MCC Funding will be included in the PSF funding to enhance the existing PNPM-Generasi implementation structure and activity components to provide block grants, participatory planning, and technical assistance to communities. The Activity is targeted at pregnant women, infants, and children under five (with a particular focus on children under two), and primary and junior high school-aged children.

Villages participating in Generasi Plus commit to improving twelve basic health and education indicators through block grants of an average size determined by the Government on an annual basis. Under Generasi Plus, stunting indicators (including a measure of children's height for age) will be added to the existing twelve indicators. The sub-district allocates the grant among villages based on the numbers of pregnant women, infants, and children under five (with a particular focus on children under two), and primary and junior high school-aged children. Both newly recruited and existing facilitators, including those trained specifically in nutrition and stunting interventions under the ''Training and Advocacy Sub-Activity'' in subsection (b)(i) below, will work with Service Providers to assist villagers in a participatory planning process, helping them identify problems and find local solutions to be funded using the block grant. In this regard, there is an ''open menu'' of options for the villages to choose from, and Generasi Plus will encourage innovation in addressing nutrition and stunting outcomes. In order to focus communities on the most beneficial interventions, the Government bases the size of the villages' Generasi block grant for the subsequent year partly on their performance on each of the targeted health and education indicators modified to include stunting indicators under Generasi Plus.

(b) Supply-side Interventions Activity.

(i) Training and Advocacy Sub-Activity.

MCC Funding will support the creation of an enhanced training program to all Service Providers in the designated project areas, as well as enhanced training for facilitators (the ''*Training Program''*). With respect to the facilitators, the purpose of the Training Program is to redirect the choice of activities to be financed under the Community Projects Activity to encourage a focus on stunting reduction and related interventions such as feeding practices, training regarding height and weight measurement, diet quality and micronutrients, and sanitation behavior change. The Training Program is also aimed at strengthening women's empowerment and increasing fathers' role in health interventions for target beneficiaries. With respect to the Service Providers, the purpose of the Training Program is to improve the quality and access of services in the areas of nutrition and sanitation. Specifically, MCC Funding will be used to:

• Develop technical and advocacy materials for the Training Program;

• Deploy the Training Program to Service Providers, community facilitators, and targeted beneficiaries at provincial, district and sub-district levels of government;

• Provide comprehensive train-the-trainer programming to Service Providers; and

• Provide and distribute the multiple micronutrient packets and height measurement equipment to communities through health centers for the first two years of implementation.

MCC Funding also will be used to provide incentives to the Service Providers based on their service delivery performance. Prior to the initial Disbursement of MCC Funding to the PSF, a manual, satisfactory to MCC, will be developed outlining the mechanisms for delivery of incentives to Service Providers, the types of incentives that will be tested and made available to Service Providers, and the performance criteria for receiving incentives. The manual also will outline Service Providers' ability to access additional incentives through Generasi Plus, which will be linked to (1) the community receiving that service, and (2) the quality of the service being received, and describe how the various incentives to be tested will be monitored.

(ii) Private Sector Response Sub-Activity.

MCC Funding will be used by the Government, through MCA-Indonesia, to make one or more grants for the purpose of leveraging private sector responses to community and family needs for improved mothers' and infants' nutrition and community sanitation. By stimulating market-based responses to identified demand for nutrition and sanitation interventions, this sub-activity is intended to support sustainable impacts beyond the Compact Term.

(c) Communications, Project Management and Evaluation Activity.

With respect to the Communications, Project Management and Evaluation Activity, MCC Funding will be used to:

• Develop and implement a national stunting awareness campaign, including a focus on healthy families that emphasizes shared decision making between women and men within the household;

• Finance the management costs associated with all three Activities within the Community-Based Nutrition Project; and

• Design and implement a rigorous impact evaluation as further described in Annex III.

2. Beneficiaries

The Community-Based Nutrition Project is expected to benefit up to 2.9 million children in up to 7,000 villages, and to generate additional income and cost savings that benefit their entire families in the provinces of West Java, East Java, Nusa Tenggara Timur (NTT), Nusa Tenggara Barat (NTB), Gorontalo and West Sulawesi.

3. Environmental and Social Mitigation Measures

The environmental screening category for the Community-Based Nutrition Project is Category D according to MCC Environmental Guidelines, as it will involve an intermediate funding facility that will use MCC Funding to finance subprojects that may result in adverse environmental and social impacts. The majority of PNPM Generasi investments involve non-infrastructure-based investments that would not be expected to result in significant environmental, health, or safety (''*EHS''*) hazards.

MCA–Indonesia will be required to develop and implement an EMS that is consistent with the IFC Performance Standards and the MCC Gender Policy, and that meets MCC and Government regulatory requirements for the Community-Based Nutrition Project. The EMS will leverage existing safeguard systems in place and be scaled appropriately, as well as capitalize on opportunities to contribute towards environmental and socially sustainable development and increased gender equality.

4. Donor Coordination

The Community-Based Nutrition Project has been designed to align to the PSF structure in part to be reflective of the *Jakarta Commitment: Aid for Development Effectiveness* of 12 January

2009 and MCC's own principles of aid effectiveness, including harmonization of donor efforts. The PSF is a mechanism established by the Government and donors to provide support to the Government through coordinated technical assistance, planning advice, dialogue, and targeted financial assistance. The Community-Based Nutrition Project is also aligned with the U.S. Department of State's *1,000 Days Partnership and Scaling Up Nutrition* (''SUN''). SUN promotes targeted action and investment to improve nutrition for mothers and children in the 1,000 day period from pregnancy to age two, when better nutrition can have a life-changing impact on a child's future.

5. USAID

While the Community-based Nutrition Project is the first U.S. Government assistance to specifically tackle the issue of stunting, USAID has significant experience with sanitation and hygiene behavioral change interventions in Indonesia. USAID also has some recent experience with a maternal health project, which targets increased availability of emergency medical care and preventive measures for pregnant women in West Java, including improved maternal nutrition. During the Compact development process, significant efforts were made to ensure that the MCC-funded activities and those of the USAID mission and other U.S. Government actors were closely coordinated. Ongoing review and coordination, as appropriate, will be integrated into implementation plans as they are finalized.

6. Sustainability

The Community-Based Nutrition Project is designed to improve chances for replication and sustainability. First, Generasi Plus attempts to coordinate and align MOHA and Ministry of Health (''*MOH''*) objectives. Aligning MOHA and MOH will allow future partnering as Generasi continues expansion. In addition, Generasi Plus successes will allow the MOH to focus on those roles best undertaken by it (*e.g.,* provision of nutrition and sanitation services provision), while allowing MOHA and PSF to assist in ensuring that communities understand and have demand for these services.

7. Policy, Legal and Regulatory Reforms

Prior to the Compact's entry into force, the Government will ensure either: (a) That the PSF is extended through the end of the Compact Term; or (b) the Government will provide an alternative implementation structure acceptable to MCC, together with a timeline for transition of the management of the Project.

Schedule 3 to Annex I—Procurement Modernization Project

This Schedule 3 generally describes and summarizes the key elements of the project that the Parties intend to implement in furtherance of the Procurement Modernization Objective (the ''*Procurement Modernization Project''*).

1. Summary of Project and Activities

The Procurement Modernization Project is designed to accelerate the Government's procurement reform agenda and transform operation of the public procurement system in Indonesia. The objective of the project is to achieve cost and efficiency savings on procured goods and services, while assuring their quality satisfies the public need, and to achieve the delivery of public services as planned. These savings should lead to greater provision of goods and services to the economy which will positively impact economic growth.

The Procurement Modernization Project will be implemented, through MCA–Indonesia, by the National Public Procurement Agency (''*LKPP''*). Reflecting the multifaceted nature of a public procurement system, the Procurement Modernization Project will support two Activities:

- Improving the procurement function by increasing the capacity and professionalization of the procurement function (the ''*Procurement Professionalization Activity''*); and
- Supporting the development of procurement policies and procedures which would improve procurement outcomes, the rate and success of public private partnerships (''PPPs''), and environmental sustainability (the ''*Policy and Procedure Activity''*).

Along with the implementation of these Activities, the Procurement Modernization Project will work to strengthen LKPP's capacity to integrate gender concerns into the procurement realm.

The Institutional Structure and Professionalization of PSUs Sub-Activity (described in subsection (a)(i) below), a central component of the Procurement Modernization Project, will be conducted in two phases. The first phase, which is expected to encompass years one to three of the Compact Term, will entail support to a subset of up to thirty demonstration procurement service units (''*PSUs''*) in order to better understand the most effective approach given different procurement contexts (''*Phase One''*). The second phase, which is expected to last for the balance of the Compact Term, will entail a scaling up of Phase One and an adjustment in design, if necessary, to yield the best results for the Project (''*Phase Two''*). MCC's decision to initiate Phase Two is subject to satisfaction of: (a) The achievement of an estimated economic rate of return for Phase Two that is above the MCC-defined hurdle rate; (b) the conclusion of an Assessment (as defined below) of Phase One; (c) the achievement of legal and policy changes as set forth in Section 7(a) below of this Schedule 3 and as may otherwise be required for the success of Phase Two; and (d) agreement between the Parties regarding the final design of Phase Two taking into account the Assessment and other relevant factors as may be necessary. In the event that MCC determines, in its sole discretion, that Phase One fails to achieve the performance criteria outlined above, the MCC Funding associated with Phase Two may be reallocated to other Activities, consistent with Section 6.2(b) of this Compact.

Prior to commencement of Phase One, the regulatory framework and level of authority for PSUs and their staff will be documented. During Phase One, MCC Funding will be used to help identify the appropriate mix of reforms for a given administrative level (*i.e., kota, kabupaten,* province, or national level) when considering characteristics such as size of procurement flows, the capacity to operate and manage procurement systems developed through the Compact, and information technology capacity. During Phase One, the Government will ensure that the demonstration PSUs comply with the regulatory framework set forth in Perpres 54/2010.

Prior to the conclusion of Phase One, the Government, through MCA–Indonesia, will ensure an independent program assessment of the performance of the Project during Phase One (the ''*Assessment''*). The design and scope of the Assessment and its application of its results to Phase Two will be specified in the PIA. The Government will ensure access to recent and current procurement data, whether in electronic or hard copy form, that is needed to carry out the Assessment. In the event MCC agrees to proceed with Phase Two, the Assessment of Phase One, together with other data and factors as may be necessary, will inform any necessary modifications to the design of Phase Two.

(a) Procurement Professionalization Activity.

In most well-functioning public procurement systems, procurement is a specialized function that protects financial resources and contributes significantly to the effective and efficient operation of the procuring organization. Within the Government, procurement is not a well-established function in the civil service.

Professionalization changes the workforce, is a key element to changing incentives in the procurement system and may create a firewall against corruption. Additional measures, including more effective ex post controls (including procurement and financial audits, and databases of procurement system performance) are also needed to ensure improved institutional performance.

The Government has required the formation of PSUs at national and local levels to serve as permanent, independent structures where procurement professionals will provide a centralized procurement service. While approximately 150 PSUs have been newly established, most have not met the requirements of a modernized procurement function, and questions remain about how to organize and define the roles and responsibilities of the PSUs within the structure of the spending unit.

The most important and most difficult next steps in the procurement reform agenda for Indonesia are to build this professional workforce, create an institutionalized role and structure that provides sufficient authority to implement good practice, and to provide a career path to incentivize adherence to best practice, while also strengthening efficiency tools and controls. To this end, the Procurement Modernization Project will implement the following mutually reinforcing sub-activities.

(i) Institutional Structure and Professionalization of PSUs Sub-Activity.

MCC Funding will support existing PSUs at the various levels of government to create models in diverse settings and circumstances. Specifically, MCC Funding will be used to:

(A) Determine standard staffing needs and strengthen operational modalities of PSUs;

(B) Engage designated PSUs in implementing the Activities described in this Procurement Modernization Project, as appropriate, to establish their feasibility and local good practices;

(C) Support LKPP's human resource development strategy, by establishing a curriculum, recognizing training institutes through an accreditation process, and training procurement officers to the requisite level of professional knowledge, skill and attitudes, including development of a mentoring program and introductory, intermediate and advanced training courses with competency-based certification. In the process of development and delivery of the course program, the Procurement Modernization Project will develop procurement trainers, and course materials, including e-learning modules, and will strengthen training institutes that will be able to continue to build and sustain the professional procurement workforce; and

(D) Support development of training modules, in consultation with the National Audit Board (''*BPKP''*), to develop competencies among the Government's auditors (inspectors general) to conduct compliance and performance audits of the procurement system.

During Phase One, up to 30 PSUs will be targeted under this sub-activity. The successful models developed in Phase One would then be rolled out to a larger set of existing or newly created PSUs under Phase Two, with a target to create a workforce of 500 procurement professionals working in permanent, fulltime positions in established PSUs. It is estimated that this newly trained workforce would provide permanent staffing needs for at least 100 PSUs but total staffing needs of model PSUs will be discovered during the demonstration phase of the project.

(ii) Procurement Management Information System Sub-Activity.

Information technology applications can provide procurement professionals with modern tools to perform their functions professionally and efficiently and can strengthen controls in the procurement process. Accordingly, MCC Funding will support:

(A) Development of an information technology system to create a data warehouse to maintain complete records of procurement activity;

(B) Testing of a procurement module at pilot sites; and

(C) Establishment of and capacity building regarding a catalog purchasing system, commonly known as an e-catalog system, to ease the administrative burden and transaction costs related to the purchasing of routine commercial products and services, together with the development of the procurement procedures and standard bidding documents for framework contracting.

(b) Policy and Procedure Development Activity.

This Activity consists of two sub-activities that together address major gaps in the procedural framework and operation of the procurement system in Indonesia.

(i) Competitive Tendering for PPPs Sub-Activity.

MCC Funding will be used to support:

(A) Preparation of guidelines and standard bidding documents for competitive tendering of PPP projects and development of a practical toolkit with templates and model documents for procurement planning and project preparation;

(B) A pilot program to demonstrate and finalize the Procurement Modernization Project in the context of tendering a PPP infrastructure project in at least one line ministry and a selected number of interested sub-national administrations, such as water utilities; and

(C) Implementation of recommended adjustments, as necessary or appropriate, of the e-procurement system and a PPP project management system.

(ii) Procedures for Sustainable Procurement Sub-Activity.

The Government should have sustainable procurement procedures when it acts as a consumer. The impact promises to be significant as the Government is the largest consumer in Indonesia and controls the spending of a large percentage of Gross Domestic Product (GDP). Moreover, the Government public procurement policy, like every national public procurement system, is a major driver of change throughout society. In furtherance of the commitment to sustainable procurement stipulated in Perpres 54/2010, MCC Funding will be used to support the development of processes and procedures to actualize this commitment. Developing the sustainable procurement framework will be implemented in three stages: A discovery stage, an establishment stage, and an implementation stage leading to a pilot program. MCC and the Government will evaluate this sub-activity's performance at the end of each stage and will move forward with the next stage only upon mutual consent.

2. Beneficiaries

Modernization of the Government's public procurement system will benefit citizens that reside in the districts, provinces, or cities which MCC targets through the PSU reforms.

The Procurement Modernization Project will support the institutional reform in PSUs established in local and central government spending units with a target goal of building a core of 500 procurement professionals. It is estimated that this newly trained

workforce would provide permanent staffing needs for at least 100 PSUs, but total staffing needs of model PSUs will be discovered during the demonstration phase of the project.

3. Environmental and Social Mitigation Measures

The nature of the Activities under the Procurement Modernization Project is such that they are unlikely to cause direct EHS hazards because they involve institutional capacity-building, and policies and procedures development.

The Competitive Tendering for PPPs sub-activity described in Section 1(b)(i) of this Schedule 3 involves policy and procedure development so that the Government can increase the efficiency of PPPs, further encourage private-sector investment, and improve government infrastructure investment. A critical component of PPP policy development will be ensuring that investors are aware of Government regulation concerning environmental, health, and safety hazards and that PPP activity meets legal requirements and strengthens the current system of incorporating ESA safeguards. MCA–Indonesia Activities are expected to include ensuring that environmental and social safeguards are addressed in standard bidding documents, developing PPP pre-award review procedures that include Ministry of the Environment, Ministry of Forestry, and other stakeholders, and strengthening the Environmental Impact Assessment (AMDAL) review procedure. Additionally, any training that is developed to roll out the revised PPP policies and procedures must also include curriculum on environmental and social safeguards. Key environmental and social issues with respect to PPPs may include the following: Labor and working conditions, community health and safety, involuntary resettlement and land acquisition, biodiversity and natural resource management, indigenous peoples, free prior and informed consent, and pollution prevention and abatement, among others.

The Sustainable Procurement sub-activity described in Section 1(b)(ii) of this Schedule 3 represents an opportunity to assist Government with its desire for environmentally sustainable growth that is outlined in the Asian Development Bank's ''Indonesia Critical Development Constraints'' analysis. Through policy development and a pilot program, LKPP will be able to determine how a sustainable procurement framework can be successfully scaled up. This activity will require that a proper certification and verification system for sustainably-sourced materials is in place to avoid incidents of ''green washing'' and further reduce EHS risk. Given the complexity of the Government's decentralized government, overlapping ESA legal framework, and large number of NGOs and advocacy groups with an interest in sustainability in Indonesia, it will be important that the Sustainable Procurement activity thoroughly consult a broad-range of stakeholders to ensure that policies and procedures are consistent with the state-of-the-art understanding and accepted by entities and organizations that will advocate for their use. It is also important that the PPP policies and procedures are well-coordinated with the Sustainable Procurement sub-activity to ensure that they are mutually reinforcing and do not jeopardize each other's success (*e.g.,* PPP procedures enable unsustainable timber extraction and Sustainable Procurement sub-activity promotes harvesting from sustainably managed forests).

4. Donor Coordination

LKPP has received support from several donors for its institutional strengthening efforts, including AusAid, the World Bank, and the Asian Development Bank. MCC has coordinated with these donors on technical and implementation strategy issues over the course of project development. Based on these discussions, AusAid has decided to extend its technical assistance program (''*ISP3''*) which was set to be completed in 2011, by one additional year. The ISP3 project has assisted LKPP to develop the strategies for human resource development and to organize PSUs that MCC is working to implement. The Asian Development Bank and the World Bank continue to provide various technical support programs and technical assistance to develop standard bidding documents. MCC plans to continue close collaboration with donors during the Compact implementation process and will continue to participate in the donor forum related to procurement.

5. USAID

Through the Indonesia Threshold Program, MCC has been at the forefront of supporting LKPP's efforts to bring more modern procurement practices to Indonesia. USAID served as the implementer of MCC's Indonesia Threshold Program, which supported expansion of LKPP's electronic procurement system (LPSEs) through the establishment of five regional procurement centers. The Procurement Modernization Project presents a unique opportunity for MCC and USAID to build on some of those early successes and work together on public procurement reform efforts throughout Compact implementation.

6. Sustainability

The Procurement Modernization Project focuses on building sustainable institutions and policies to achieve improved, long-term public procurement practices in Indonesia by ensuring greater transparency, accountability, and delivery of better value goods and services for money. While the capacity development program invests in individuals, it is designed to be implemented in a manner that builds training institutions equipped with the resources to expand and continually maintain the procurement workforce. The PSUs to be piloted are intended as case studies providing lessons-learned and best practices as models for establishing such units throughout the country.

7. Policy, Legal and Regulatory Reforms

(a) As a condition to the commencement of Phase Two, the Government shall have established procurement as a functional profession in the civil service with a defined career path.

(b) The Government will identify the policy, legal and regulatory reforms needed to effectively competitive tender PPP projects.

(c) The Government will further any necessary policy, legal, and regulatory reforms to encourage the purchase of green goods and services within the public procurement sector.

Annex II Multi-Year Financial Plan Summary

This Annex II summarizes the Multi-Year Financial Plan for the Program.

1. General

A multi-year financial plan summary (''*Multi-Year Financial Plan Summary''*) is attached hereto as Exhibit A. By such time as specified in the PIA, the Government will adopt, subject to MCC approval, a multi-year financial plan that includes, in addition to the multi-year summary of estimated MCC Funding and the Government's contribution of funds and resources, the annual and quarterly funding requirements for the Program (including administrative costs) and for each Project, projected both on a commitment and cash requirement basis.

EXHIBIT A—MULTI-YEAR FINANCIAL PLAN SUMMARY (US)

COMPONENT	CIF	Year 1	Year 2	Year 3	Year 4	Year 5	Total
1. GP PROJECT							
(a) Participatory Land Use Planning Activity	$3,000,000	$8,000,000	$5,000,000	$4,000,000	$3,000,000	$2,000,000	$25,000,000
(b) Technical Assistance and Oversight Activity	850,000	10,350,000	10,200,000	9,700,000	9,700,000	9,200,000	50,000,000
(c) GP Facility Activity	500,000	46,000,000	50,000,000	48,650,000	48,850,000	48,500,000	242,500,000
(d) Green Knowledge Activity	0	3,460,000	2,960,000	2,960,000	2,960,000	2,660,000	15,000,000
Subtotal	4,350,000	67,810,000	68,160,000	65,310,000	64,510,000	62,360,000	332,500,000
2. COMMUNITY–BASED NUTRITION PROJECT							
(a) Community Projects Activity	0	10,584,000	13,608,000	16,632,000	19,656,000	21,168,000	81,648,000
(b) Supply-Side Activity	1,000,000	7,177,798	7,893,096	6,315,052	8,887,008	4,658,057	35,931,011
(c) Communications, Project Management and Evaluations Activity	0	4,459,326	3,081,077	3,001,294	1,648,011	1,731,281	13,920,989
Subtotal	1,000,000	22,221,124	24,582,173	25,948,346	30,191,019	27,557,338	131,500,000
3. PROCUREMENT MODERNIZATION PROJECT							
(a) Procurement Professionalization Activity	1,750,000	6,750,000	6,750,000	7,055,250	15,000,000	9,101,750	46,407,000
(b) Policy and Procedure Activity	0	898,250	898,250	898,250	898,250	0	3,593,000
Subtotal	1,750,000	7,648,250	7,648,250	7,953,500	15,898,250	9,101,750	50,000,000
4. MONITORING AND EVALUATION							
Monitoring and Evaluation (M&E) Activity	200,000	1,500,000	2,000,000	1,000,000	2,500,000	3,000,000	10,200,000
Subtotal	200,000	1,500,000	2,000,000	1,000,000	2,500,000	3,000,000	10,200,000
5. PROGRAM ADMINISTRATION AND CONTROL							
(a) Program Administration	1,000,000	9,200,000	9,700,000	9,700,000	9,100,000	10,800,000	49,500,000
(b) Fiscal Management	1,800,000	1,800,000	1,800,000	1,800,000	1,800,000	1,800,000	10,800,000
(c) Procurement Management	1,800,000	1,800,000	1,500,000	1,500,000	1,200,000	1,200,000	9,000,000
(d) Audit	0	300,000	300,000	300,000	300,000	300,000	1,500,000
(e) Targeted Gender Activities	100,000	800,000	1,200,000	1,200,000	1,200,000	500,000	5,000,000
Subtotal	4,700,000	13,900,000	14,500,000	14,500,000	13,600,000	14,600,000	75,800,000
Total Compact Budget	12,000,000	113,079,374	116,890,423	114,711,846	126,699,269	116,619,088	600,000,000

Annex III Description of Monitoring and Evaluation Plan

This Annex III generally describes the components of the monitoring and evaluation plan (''*M&E Plan''*) for the Program. The actual content and form of the M&E Plan will be agreed to by MCC and the Government in accordance with MCC's Policy for Monitoring and Evaluation of Compacts and Threshold Programs posted from time to time on the MCC Web site (the ''*MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs''*). The M&E Plan may be modified as outlined in MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs with MCC approval without requiring an amendment to this Annex III.

1. Overview

MCC and the Government will formulate and agree to, and the Government will implement or cause to be implemented, an M&E Plan that specifies: (a) How progress toward the Compact Goal and Project Objectives will be monitored (''*Monitoring Component''*); (b) a process and timeline for the monitoring of planned, ongoing, or completed Activities to determine their efficiency and effectiveness; and (c) a methodology for assessment and rigorous evaluation of the outcomes and impact of the Program (''*Evaluation Component''*). Information regarding the Program's performance, including the M&E Plan, and any amendments or modifications thereto, as well as progress and other reports, will be made publicly available on the Web site of MCC, MCA-Indonesia and elsewhere.

In addition, data and empirical findings obtained through the M&E Plan, including through Impact Evaluations (as defined below), will be used to calculate or recalculate the projected and ex post ERRs for the Projects and Activities as appropriate and in accordance with MCC's Guidance on Economic Analysis, in order to assess whether Projects and Activities continue to meet the MCC-defined hurdle rate. MCC may elect to use what it deems to be the most relevant and appropriate economic model, and may apply the evidence it deems most convincing in connection with that model, but will consult with MCA-Indonesia and other relevant experts in weighing and contextualizing

such evidence. MCC may elect to reduce or eliminate the scope or Compact budget for any Projects, Activities, or sub-activities should their respective ERRs fall below the hurdle rate. Further detail regarding the method by which the ERRs will be calculated for projects financed with funding from the GP Facility will be provided in the Program Implementation Agreement.

MCC and the Government may also agree to refinements to the program logic, specific program elements, and detailed design of projects and activities to support a higher projected ERR and improved realization of the intended Goal or Objectives of this Compact based upon additional data, preliminary or interim monitoring and evaluation findings, and/or an improved understanding of the causes of and most promising solutions to the constraints to economic growth addressed in this Compact, including social and gender, policy, regulatory, and other issues, both prior to and after entry into force of this Compact.

2. Program Logic

The M&E Plan will be built on a logic model which illustrates how the Program, Projects and Activities contribute to the Compact Goal and the Project Objectives.

(a) The objective of the Community-Based Nutrition Project is to reduce and prevent low birth weight, childhood stunting and malnourishment of children in project areas. This will lead to an increase household incomes through cost savings, increases in productivity and higher lifetime earnings;

(b) The objectives of the GP Project are to (i) increase productivity and reduce reliance on fossil fuels by expanding renewable energy; and (ii) increase productivity and reduce land-based greenhouse gas emissions by improving land use practices and management of natural resources. These objectives support low carbon economic development and the protection of natural capital that will lead to increased household incomes in project areas; and

(c) The objectives of the Procurement Modernization Project are to (i) achieve significant government expenditure savings on procured goods and services; and to (ii) improve the delivery of public services through expenditure of planned budgets.

3. Monitoring Component

To monitor progress toward the achievement of the impact and outcomes of the Compact, the Monitoring Component of the M&E Plan will identify: (i) The Indicators (as defined below), (ii) the definitions of the Indicators, (iii) the sources and methods for data collection, (iv) the frequency for data collection, (v) the party or parties responsible for collecting and analyzing relevant data, and (vi) the timeline for reporting on each Indicator to MCC.

Further, the Monitoring Component will track changes in the selected Indicators for measuring progress towards the achievement of the Project Objective during the Compact Term. MCC also intends to continue monitoring and evaluating the long-term impacts of the Compact after Compact expiration. The M&E Plan will establish baselines which measure the situation prior to a development intervention, against which progress can be assessed or comparisons made (each, a ''*Baseline*''). The Government will collect Baselines on the selected Indicators or verify already collected Baselines where applicable and as set forth in the M&E Plan.

(a) Indicators

The M&E Plan will measure the results of the Program using quantitative, objective and reliable data (''*Indicators*''). Each indicator will have benchmarks that specify the expected value and the expected time by which that result will be achieved (''*Target*''). The M&E Plan will be based on a logical framework approach that classifies indicators as goal, objective, outcome, and output. The Compact Goal indicators (''*Goal Indicators*'') will measure the poverty reduction goal for each Project. Second, the Objective Indicator (''*Project Objective Indicators*'') will measure the final result of each Project. Third, Output and Outcome Indicators (''*Project Outcome Indicators*'') will measure the early and intermediate results of the Project activities. For each Project Outcome Indicator, Project Objective Indicator, and Goal Indicator, the M&E Plan will define a strategy for obtaining and verifying the value of the Baselines. All indicators will be disaggregated by gender, income level and age, and beneficiary types to the extent practicable. Subject to prior written approval from MCC, MCA-Indonesia may add indicators or refine the definitions and Targets of existing indicators.

(i) Compact Indicators

(1) Goal. The M&E Plan will contain the following Indicators related to the Compact Goal and based on national statistics. The Program will contribute to progress against poverty nationwide and the reduction of carbon emissions in Project areas, but the results are attributable to many factors in the economy:

(A) Increased incomes of households in Project areas.[1]

(B) Increased efficiency and quality in the expenditure of public funds.

(2) Objective and Outcome Indicators. The M&E Plan will contain the Indicators listed in the following tables. Prior to entry into force, all Baseline and Targets will be assessed and modified by the Parties as Project sites, Activity details, and new Baseline data become available. Minimum Targets will be identified and this Annex III will be modified accordingly, prior to entry into force. In addition, the M&E Plan will be amended to reflect the addition of such indicators. MCC common Indicators relevant to the Projects will also be included.

TABLE 1—COMMUNITY-BASED NUTRITION PROJECT

Result	Indicator	Definition	Unit of measurement	Baseline	Year 5 target
Objective Level Indicator					
Reduce and prevent low birth weight, childhood stunting and malnourishment of children in project areas.	Reduction in stunting ..	Decrease in stunting rates among children in project areas.	Percent	TBD	−20

[1] This applies to both the Community-Based Nutrition and Green Prosperity projects.

TABLE 1—COMMUNITY-BASED NUTRITION PROJECT—Continued

Result	Indicator	Definition	Unit of measurement	Baseline	Year 5 target
	Reduction in low birth weight.	Decreased percentage of children born under 2500 grams in project areas.	Percent	TBD	−21
		Outcome Indicators [2]			
Improved healthcare delivery.	Increase in prenatal care visits.	Pregnant mothers examined by a midwife at least 4 times during pregnancy.	Percentage point	TBD	+10
	Increase in assisted deliveries.	Deliveries assisted by trained health workers	Percentage point	TBD	+10
	Increased distribution of iron supplements.	Each pregnant woman receives a minimum of 90 iron pills during her pregnancy.	Percent	TBD	+10
	Increased distribution of Vitamin A supplements.	Each baby from 6 to 59 months receives Vitamin A, twice a year.	Percent	TBD	TBD
	Increase in postnatal treatment provided.	Each mother and baby receive postnatal treatment from a midwife or a doctor, at least twice within 40 days of delivery.	Percent	TBD	TBD
	Increased number of children measured.	Each children below two year measured routinely.	percent	0	80
	Regular monthly weighing increases.	Regular weighing for under-five	Percent	TBD	TBD
	Increased immunization coverage.	Immunization coverage for 12–23 months old in target areas.	Percentage point	TBD	+10

TABLE 2—GREEN PROSPERITY PROJECT [3]

Result	Indicator	Definition	Unit of measurement	Baseline	Year 5 target
		Objective Level			
Expand renewable energy to increase productivity and reduce reliance on fossil fuels.	Number of households [4] electrified disaggregated by administrative level.	Percentage of households electrified by renewable energy sources in targeted subdistricts and districts [5] as a result of projects.	Percent	TBD [6]	TBD
		Percentage of households electrified in villages.	Percent	TBD	TBD
	Increased percentage of on grid/off grid renewable energy vis a vis fossil fuel-generated power.	[Renewable energy source/fossil fuel-supplied power plants and renewable energy source] * 100.	Percent	TBD	TBD
Improve land use practices and management of natural resources to increase productivity and reduce land-based greenhouse gas emissions.	Increased agricultural productivity.	On farm productivity increases on existing agriculture and degraded lands, to be disaggregated by commodity.	Agricultural yield/hectare.	TBD	TBD
		Outcome Indicators			
Improved land use practices and management of natural resources to increase productivity of land.	Number of loan borrowers.	Number of borrowers (primary sector producers, rural entrepreneurs, and associations) who access loans for on-farm, off-farm, and rural investment.	Number	TBD	TBD

TABLE 2—GREEN PROSPERITY PROJECT [3]—Continued

Result	Indicator	Definition	Unit of measurement	Baseline	Year 5 target
	Improved watershed management.	Improved water quality as measured by reduced water turbidity.	Total Suspended Solids.	TBD	TBD
Maintaining or improving carbon sinks (*i.e.* carbon sequestration) [7].	Density of forest cover maintained or improved.	CO2 capture levels of primary, secondary, and heavily degraded forest ratios [8].	Ha	TBD	TBD
	Peat land saturation and level of groundwater.	Conditions of peat lands, method appropriate for each project area TBD.	Ha in compliance with preservation standard.	TBD	TBD
Output Level					
Revised spatial plans ..	Number of spatial plans updated or improved.	Number of spatial plans at the district and provincial levels that include licensing and administrative boundary information.	Number	0	10
Increased community engagement.	Increase in community land oversight.	Number of hectares brought under community conservation plans.	Ha	TBD	TBD
	Amount of forest cover monitored.	Community-based forest management area designations increased.	Ha	TBD	TBD
Increased community knowledge.	Development and improvement of Centers of Excellence.	Number of Centers of Excellence that receive project support to promote low carbon development.	Number	TBD	TBD
	Trained stakeholders ..	Number of micro/small/medium enterprises, civil society organizations, cooperatives, communities and local officials trained on sustainable, low carbon development.	Number	TBD	TBD

TABLE 3—PROCUREMENT MODERNIZATION PROJECT [9]

Result	Indicator	Definition	Unit of measurement	Baseline	Year 5 target
Objective Level					
Government savings ...	Reduced expenditure on goods and services.	Expenditures on key goods and services* over time as the [purchase price/market price].	Percent	TBD	−2.5%
	Improved quality of goods and services.	Increased quality of key goods and services* over time per qualitative audit.	Percent	TBD	TBD
Reduction in bunching	Reduction in unspent and delay of spending allocated budget.	[Annual expenditure of PSU/Annual allocation].	PSU expenditure/Allocation.	TBD	TBD
Outcome Level					
Project Benefits	Number of procurement service units.	Procurement service units supported by project.	Number	0	60

[3] All baseline and target values will be established for the geographic areas targeted by the project activities, likely at the district or sub-district level.

[4] If feasible, this indicator will be modified to include home-based industry and small businesses.

[5] Electrified shall be further defined to establish the minimum level of power and hours of available supply required to be classified as ''electrified.''

[6] Data sources provide differing figures for electrification rates. Because local governments track electricity connections at the district and provincial levels, baseline data will be determined prior to entry into force for the candidate districts of Jambi and West Sulawesi that will receive support during the first phase of the Project. Similar exercises will be done for remaining districts as site selection takes place.

[7] Methods for estimating emission reductions related to maintaining or improving carbon sinks (sequestration) in project areas will be established for project activities in the targeted areas by entry into force.

[8] Emission factors of different landscapes will need to be determined.

TABLE 3—PROCUREMENT MODERNIZATION PROJECT [9]—Continued

Result	Indicator	Definition	Unit of measurement	Baseline	Year 5 target
	Number of additional public private partnerships.	Public private partnerships established with the GOI.	Number	0	TBD
	Establishment of procurement information systems.	Integrated e-catalog and procurement management system operating in supported PSUs.	Number	0	TBD
		Output Level			
Increased Competition	Average number of bidders.	[number of bidders per procurement/total number of procurements].	Number of bidders/ Total procurements.	TBD	TBD
	Decrease in sole source procurements.	[number of sole source/total number of procurements].	Sole source procurements/Total procurements.	TBD	TBD
	Decrease in cancelled procurements.	[number of cancelled/total number of procurements].	Procurements cancelled/Total procurements.	TBD	TBD
	Increased PSU responsiveness to complaints.	[number of responses/number of complaints]	Responses/complaints	TBD	TBD
	Number of protests filed.	Number of protests to procurement actions by private firms.	Number	TBD	TBD
	Percent of protests in which award was reversed.	[Decisions to reverse award/number of protests].	Percent	TBD	TBD
Increased Efficiency	Average time to prepare bid.	Days required to prepare bid, on average	[Days to prepare bidding documents/prepared bids].	TBD	TBD
	Average number of days for bid evaluation.	Days required to evaluate bid, on average	[Days to evaluate bids/ number of bids evaluated].	TBD	TBD
	Average number of days from evaluation to award.	Number of days between completion of the evaluation of bids to the award of a contract.	[Days from evaluation to award/number of evaluated procurements].	TBD	TBD

(b) Data Collection and Reporting. The M&E Plan will establish guidelines for data collection and reporting, and identify the responsible parties. Compliance with data collection and reporting timelines will be conditions for Disbursements for the relevant Activities as set forth in the Program Implementation Agreement. The M&E Plan will specify the data collection methodologies, procedures, and analysis required for reporting on results at all levels. The M&E Plan will describe any interim MCC approvals for data collection, analysis, and reporting plans.

(c) Data Quality Reviews. As determined in the M&E Plan or as otherwise requested by MCC, the quality of the data gathered through the M&E Plan will be reviewed to ensure that data reported are as valid, reliable, and timely as resources will allow. The objective of any data quality review will be to verify the quality and the consistency of performance data across different implementation units and reporting institutions. Such data quality reviews also will serve to identify where those levels of quality are not possible, given the realities of data collection.

(d) Management Information System. The M&E Plan will describe the information system that will be used to collect data, store, process and deliver information to relevant stakeholders in such a way that the Program information collected and verified pursuant to the M&E Plan is at all times accessible and useful to those who wish to use it. The system development will take into consideration the requirement and data needs of the components of the Program, and will be aligned with existing MCC systems, other service providers, and ministries.

(e) Role of MCA-Indonesia. The monitoring and evaluation of this Compact spans three discrete Projects and will involve a variety of governmental, nongovernmental, and private sector institutions. In accordance with the designation contemplated by Section 3.2(b) of this Compact, MCA-Indonesia is responsible for implementation of the M&E Plan. MCA-Indonesia will oversee all Compact-related monitoring and

[9] The table of indicators refers to data that will be drawn from contracts. All contract data will be made anonymous to ensure confidentiality; key variables such as technical specifications, bid prices, and final prices will be necessary. In addition, procuring entities will be required to share (and in some cases collect) data on sole source procurements, protests, complaints, and other relevant indicators.

evaluation activities conducted for each of the Projects, ensuring that data from all implementing entities is consistent, accurately reported and aggregated into regular Compact performance reports as described in the M&E Plan.

4. Evaluation Component.

The Evaluation Component of the M&E Plan will contain three types of evaluations: (i) Impact evaluations; (ii) project performance evaluations; and (iii) special studies. The Evaluation Component of the M&E Plan will describe the purpose of the evaluation, methodology, timeline, required MCC approvals, and the process for collection and analysis of data for each evaluation. The results of all evaluations will be made publicly available in accordance with MCC's Policy for Monitoring and Evaluation of Compacts and Threshold Programs.

(a) Impact Evaluation. The M&E Plan will include a description of the methods to be used for impact evaluations and plans for integrating the evaluation method into Project design. Based on in-country consultation with stakeholders, the strategies outlined below were jointly determined as having the strongest potential for rigorous impact evaluation. The M&E Plan will further outline in detail these methodologies. Final impact evaluation strategies are to be included in the M&E Plan. The following is a summary of the potential impact evaluation methodologies:

(i) Community-Based Nutrition Project. The evaluation will focus on determining both household level impacts on stunting outcomes as well as the effect of incentives for communities and health workers and the effects of gender integration strategies on women's empowerment, possibly through a qualitative gender module. The household level impacts of interest include reduced expenditures on healthcare and improved wellbeing, including through height and weight measures. The impact is expected to be determined through randomization of the intervention which will permit a comparison of the beneficiary households to households in similar circumstances outside the project areas. Baseline, midterm and endline data collection at the household level will supply data for estimating the Project's effects. The evaluation will attempt to isolate the impact of Generasi, Generasi Plus, and Generasi Plus without the planned incentives to better estimate the effect of each set of interventions in combination and separately. In close coordination with MCA-Indonesia, the PSF will be responsible for management of data collection and MCC will directly contract a firm to manage the overall evaluation.

(ii) GP Project. The evaluation will examine the (1) increased productivity resulting from electrification through renewable energy sources, (2) increased household and firm incomes resulting from renewable energy resources and improvement in agricultural and land management practices, and (3) impact of Project activities on reducing land and fossil fuel-based emissions.

(iii) Procurement Modernization Project. The evaluation will include an analysis of the savings, improved quality, and increased efficiency of procurement service units. The methodology is expected to employ quasi-experimental techniques comparing PSUs that do not receive project support to those PSUs that do receive Project support. The methodology also will ensure similarity across key characteristics, such as levels of procurement flows, information technology capacity, and population size.

(b) Final Evaluation. The M&E Plan will make provision for final Project level evaluations (''Final Evaluations''). With the prior written approval of MCC, the Government will engage independent evaluators to conduct the Final Evaluations at the end of each Project. The Final Evaluations will review progress during Compact implementation and provide a qualitative context for interpreting monitoring data and impact evaluation findings. They must at a minimum (i) evaluate the efficiency and effectiveness of the Activities; (ii) determine if and analyze the reasons why the Compact Goal and Project Objective(s), outcome(s) and output(s) were or were not achieved; (iii) identify positive and negative unintended results of the Program; (iv) provide lessons learned that may be applied to similar projects; and (v) assess the likelihood that results will be sustained over time.

(c) Special Studies. The M&E Plan will include a description of the methods to be used for special studies, as necessary, funded through this Compact or by MCC. Plans for conducting the special studies will be determined jointly between the Government and MCC before the approval of the M&E Plan. The M&E Plan will identify and make provision for any other special studies, *ad hoc* evaluations, and research that may be needed as part of the monitoring and evaluating of this Compact. Either MCC or the Government may request special studies or *ad hoc* evaluations of Projects, Activities, or the Program as a whole prior to the expiration of the Compact Term. When MCA-Indonesia engages an evaluator, the engagement will be subject to the prior written approval of MCC. For all evaluations of Compact Projects, whether commissioned by MCC, MCA-Indonesia or the Government, contract terms shall ensure non-biased results and the publication of results.

(d) Request for Ad Hoc Evaluation or Special Study. If the Government requires an *ad hoc* independent evaluation or special study at the request of the Government for any reason, including for the purpose of contesting an MCC determination with respect to a Project or Activity or to seek funding from other donors, no MCC Funding resources may be applied to such evaluation or special study without MCC's prior written approval.

5. Other Components of the M&E Plan

In addition to the monitoring and evaluation components, the M&E Plan will include the following components for the Program, Projects and Activities, including, where appropriate, roles and responsibilities of the relevant parties and providers:

(a) Costs. A detailed cost estimate for all components of the M&E Plan; and

(b) Assumptions and Risks. Any assumption or risk external to the Program that underlies the accomplishment of the Project Objectives and Activity outcomes and outputs. However, such assumptions and risks will not excuse any Party's performance unless otherwise expressly agreed to in writing by the other Party.

6. Approval and Implementation of the M&E Plan

The approval and implementation of the M&E Plan, as amended from time to time, will be in accordance with the Program Implementation Agreement, any other relevant Supplemental Agreement and the MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs.

Annex IV—Conditions Precedent to Disbursement of Compact Implementation Funding

This Annex IV sets forth the conditions precedent applicable to Disbursements of Compact Implementation Funding (each a ''CIF Disbursement''). Upon execution of the Program Implementation Agreement, each CIF Disbursement will be subject to the terms of the Program Implementation Agreement.

1. Conditions Precedent to Initial CIF Disbursement

Each of the following must have occurred or been satisfied to MCC's satisfaction prior to the initial CIF Disbursement:

(a) The Government will have published the Establishment Decree, and such decree will remain in full force and effect, without modification, alteration, rescission, or suspension of any kind unless otherwise agreed by MCC.

(b) The Government (or MCA-Indonesia) has delivered to MCC:

(i) An interim fiscal accountability plan acceptable to MCC; and

(ii) A CIF procurement plan acceptable to MCC.

(c) MCA-Indonesia will be sufficiently mobilized in order for MCA-Indonesia to be able to fully perform its obligations relevant to the particular Disbursement Request and to act on behalf of the Government.

(d) The Government will have enacted such decrees and regulations as necessary to implement Section 2.8 of this Compact.

2. Conditions Precedent to All CIF Disbursements (Including Initial CIF Disbursement)

Each of the following must have occurred or been satisfied prior to each CIF Disbursement:

(a) The Government (or MCA-Indonesia) has delivered to MCC the following documents, in form and substance satisfactory to MCC:

(i) A completed Disbursement Request, together with the applicable Periodic Reports, for the applicable Disbursement Period, all in accordance with the Reporting Guidelines; and

(ii) A certificate of the Government (or MCA-Indonesia), dated as of the date of the Disbursement Request, in such form as provided by MCC.

(b) If any proceeds of the CIF Disbursement are to be deposited in a bank account, MCC has received satisfactory evidence that (i) the Bank Agreement has been executed and (ii) the Permitted Accounts have been established.

(c) Appointment of an entity or individual to provide fiscal agent services, as approved by MCC, until such time as the Government provides to MCC a true and complete copy of a Fiscal Agent Agreement, duly executed and in full force and effect, and the fiscal agent engaged thereby is mobilized.

(d) Appointment of an entity or individual to provide procurement agent services, as approved by MCC, until such time as the Government provides to MCC a true and complete copy of the Procurement Agent Agreement, duly executed and in full force and effect, and the procurement agent engaged thereby is mobilized.

(e) MCC is satisfied, in its sole discretion, that (i) the activities being funded with such CIF Disbursement are necessary, advisable or otherwise consistent with the goal of facilitating the implementation of the Compact and will not violate any applicable law or regulation; (ii) no material default or breach of any covenant, obligation or responsibility by the Government, MCA-Indonesia or any Government entity has occurred and is continuing under this Compact or any Supplemental Agreement; (iii) there has been no violation of, and the use of requested funds for the purposes requested will not violate, the limitations on use or treatment of MCC Funding set forth in Section 2.7 of this Compact or in any applicable law or regulation; (iv) any Taxes paid with MCC Funding through the date 90 days prior to the start of the applicable Disbursement Period have been reimbursed by the Government in full in accordance with Section 2.8(c) of this Compact; and (v) the Government has satisfied all of its payment obligations, including any insurance, indemnification, tax payments or other obligations, and contributed all resources required from it, under this Compact and any Supplemental Agreement.

(f) For any CIF Disbursement occurring after this Compact has entered into force in accordance with Article 7: MCC is satisfied, in its sole discretion, that the Government has satisfied any terms and conditions to CIF Disbursements as may be set forth in the Program Implementation Agreement.

(g) MCC has not determined, in its sole discretion, that an act, omission, condition, or event has occurred that would be the basis for MCC to suspend or terminate, in whole or in part, the Compact or MCC Funding in accordance with Section 5.1 of this Compact.

Annex V—Definitions

Activity has the meaning provided in paragraph 2(a) of Part A of Annex I.

Additional Representative has the meaning provided in Section 4.2.

Assessment has the meaning provided in paragraph 1 of Schedule 3 to Annex I.

Audit Guidelines has the meaning provided in Section 3.8(a).

Bank Agreement means an agreement, in form and substance satisfactory to MCC, with the financial institution approved by MCC to hold Permitted Accounts and that sets forth the signatory authority, access rights, anti-money laundering and anti-terrorist financing provisions, and other terms related to such Permitted Account.

BAPPENAS has the meaning provided in paragraph 1(a) of Part A of Annex I.

Baseline has the meaning provided in paragraph 3 of Annex III.

BPKP has the meaning provided in paragraph 1(a)(i)(D) of Schedule 3 to Annex I.

Board has the meaning provided in paragraph 2 of Part C of Annex I.

CIF Disbursement has the meaning provided in Annex IV.

Communications, Project Management and Evaluation Activity has the meaning provided in paragraph 1 of Schedule 2 to Annex I.

Community-Based Nutrition Project has the meaning provided in Schedule 2 to Annex I.

Community Projects Activity has the meaning provided in paragraph 1 of Schedule 2 to Annex I.

Compact has the meaning provided in the Preamble.

Compact Goal has the meaning provided in Section 1.1.

Compact Implementation Funding has the meaning provided in Section 2.2(a).

Compact Records has the meaning provided in Section 3.7(a).

Compact Term has the meaning provided in Section 7.4.

Covered Provider has the meaning provided in Section 3.7(c).

Disbursement has the meaning provided in Section 2.4.

Disbursement Period means each fiscal quarter or any other period of time as agreed by MCC.

Disbursement Request means a written request substantially in the form of the ''Disbursement Request and Quarterly Financial Report'' posted on the MCC Web site, as the same may be amended from time to time.

EHS has the meaning provided in paragraph 3 of Schedule 2 to Annex I.

ESA has the meaning provided in paragraph 3 of Schedule 1 to Annex I.

ESDM has the meaning provided in paragraph 7 of Schedule 1 to Annex I.

ESMS has the meaning provided in paragraph 3 of Schedule 1 to Annex I.

Establishment Decree has the meaning provided in Section 3.2(b).

Evaluation Component has the meaning provided in paragraph 1 of Annex III.

Excess CIF Amount has the meaning provided in Section 2.2(d).

Final Evaluations has the meaning provided in paragraph 4(b) of Annex III.

Fiscal Agent has the meaning provided in paragraph 6 of Part C of Annex I.

Fiscal Agent Agreement means an agreement between MCA-Indonesia and the Fiscal Agent, in form and substance satisfactory to MCC, which sets forth the roles and responsibilities of the Fiscal Agent and other appropriate terms and conditions.

Fiscal Agent Disbursement Certificate has the meaning provided in Section 3.4(a)(v) of the PIA.

FIT has the meaning provided in paragraph 7 of Schedule 1 to Annex I.

Generasi has the meaning provided in paragraph 1 of Schedule 2 to Annex I.

Generasi Plus has the meaning provided in paragraph 1 of Schedule 2 to Annex I.

Goal Indicators has the meaning provided in paragraph 3(a) of Annex III.

Governance Guidelines means MCC's Guidelines for Accountable Entities and Implementation Structures, as such may be posted on MCC's Web site from time to time. Government has the meaning provided in the Preamble.

GP Facility has the meaning provided in paragraph 1 of Schedule 1 to Annex I.

GP Facility Activity has the meaning provided in paragraph 1 of Schedule 1 to Annex I.

GP Facility Manager has the meaning provided in paragraph 1(c) of Schedule 1 to Annex I.

GP Objective has the meaning provided in Section 1.2(a).

GP Project has the meaning provided in Schedule 1 to Annex I.

Grant has the meaning provided in Section 3.6(b).

Green Knowledge Activity has the meaning provided in paragraph 1 of Schedule 1 to Annex I.

IFC Performance Standards means the performance standards on environmental and social sustainability promulgated by the International Finance Corporation from time to time.

Implementing Entity has the meaning provided in paragraph 5 of Part C of Annex I.

Implementing Entity Agreement has the meaning provided in paragraph 5 of Part C of Annex I.

Implementation Letter has the meaning provided in Section 3.5.

Implementing Regulations has the meaning provided in paragraph 2 of Part C of Annex I.

Implementing Team has the meaning provided in paragraph 3 of Part C of Annex I.

Indicators has the meaning provided in paragraph 3(a) of Annex III.

Inspector General has the meaning provided in Section 3.7(d).

Intellectual Property means all registered and unregistered trademarks, service marks, logos, names, trade names and all other trademark rights; all registered and unregistered copyrights; all patents, inventions, shop rights, know how, trade secrets, designs, drawings, art work, plans, prints, manuals, computer files, computer software, hard copy files, catalogues, specifications, and other proprietary technology and similar information; and all registrations for, and applications for registration of, any of the foregoing, that are financed, in whole or in part, using MCC Funding.

Investment Criteria has the meaning provided in paragraph 1(c) of Schedule 1 to Annex I.

ISP3 has the meaning provided in paragraph 4 of Schedule 3 to Annex I.

LKPP has the meaning provided in paragraph 1 of Schedule 3 to Annex I.

M&E Plan has the meaning provided in Annex III.

MCA Act has the meaning provided in Section 2.2(a).

MCA-Indonesia has the meaning provided in Section 3.2(b).

MCC has the meaning provided in the Preamble.

MCC Environmental Guidelines has the meaning provided in Section 2.7(c).

MCC Funding has the meaning provided in Section 2.3.

MCC Gender Policy means the MCC ''Gender Policy'' (including any guidance documents issued in connection with the guidelines) posted from time to time on the MCC Web site or otherwise made available to the Government.

MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs has the meaning provided in Annex III.

MCC Program Procurement Guidelines has the meaning provided in Section 3.6(a).

MCC Web site has the meaning provided in Section 2.7.

MOH has the meaning provided in paragraph 6 of Schedule 2 to Annex I.

MOHA has the meaning provided in paragraph 1 of Schedule 2 to Annex I.

Monitoring Component has the meaning provided in paragraph 1 of Annex III.

Multi-Year Financial Plan Summary has the meaning provided in paragraph 1 of Annex II.

Nutrition Objective has the meaning provided in Section 1.2(b).

OP 4.12 has the meaning provided in paragraph 3 of Part A of Annex I.

Operations Manual has the meaning provided in paragraph 1(c) of Schedule 1 to Annex I.

Participatory Land Use Planning Activity has the meaning provided in paragraph 1 of Schedule 1 to Annex I.

Party and *Parties* have the meaning provided in the Preamble.

Periodic Report means the periodic reports and information required by the Reporting Guidelines.

Permitted Account has the meaning provided in Section 2.4.

Phase One has the meaning provided in paragraph 1 of Schedule 3 to Annex I.

Phase Two has the meaning provided in paragraph 1 of Schedule 3 to Annex I.

Plan has the meaning provided in paragraph 1 of Schedule 1 to Annex I.

PLN means Perusahaan Listrik Negara, the Indonesian state electricity company.

PNPM means the Government's National Community Empowerment Program (Program Nasional Pemberdayaan Masyarakat).

Policy and Procedure Activity has the meaning provided in paragraph 1 of Schedule 3 to Annex I.

PPPs has the meaning provided in paragraph 1 of Schedule 3 to Annex I.

Principal Representative has the meaning provided in Section 4.2.

Procurement Agent has the meaning provided in paragraph 7 of Part C of Annex I.

Procurement Agent Agreement means the agreement between MCA-Indonesia and the Procurement Agent, in form and substance satisfactory to MCC, which sets forth the roles and responsibilities of the Procurement Agent with respect to the conduct, monitoring, and review of procurements and other appropriate terms and conditions.

Procurement Modernization Objective has the meaning provided in Section 1.2(c).

Procurement Modernization Project has the meaning provided in Schedule 3 to Annex I.

Procurement Professionalization Activity has the meaning provided in paragraph 1 of Schedule 3 to Annex I.

Program has the meaning provided in the Preamble.

Program Assets means any assets, goods or property (real, tangible or intangible) purchased or financed in whole or in part (directly or indirectly) by MCC Funding.

Program Funding has the meaning provided in Section 2.1.

Program Guidelines means collectively the Audit Guidelines, the MCC Environmental Guidelines, the MCC Gender Policy, the Governance Guidelines, the MCC Program Procurement Guidelines, the Reporting Guidelines, the MCC Policy for Monitoring and Evaluation of Compacts and Threshold Programs, the MCC Cost Principles for Government Affiliates Involved in Compact Implementation (including any successor to any of the

foregoing) and any other guidelines, policies or guidance papers relating to the administration of MCC-funded compact programs and as from time to time published on the MCC Web site.

Program Implementation Agreement and *PIA* have the meaning provided in Section 3.1.

Project(s) has the meaning provided in Section 1.2.

Project Objective(s) has the meaning provided in Section 1.2.

Project Objectives Indicators has the meaning provided in paragraph 3(a) of Annex III.

Project Outcome Indicators has the meaning provided in paragraph 3(a) of Annex III.

Provider has the meaning provided in Section 3.7(c).

PSF has the meaning provided in paragraph 1 of Schedule 2 to Annex I.

PSUs has the meaning provided in paragraph 1 of Schedule 3 to Annex I.

REDD+ means reducing emissions from deforestation and forest degradation, and the role of conservation, sustainable management of forests and enhancement of forest carbon stocks.

Reporting Guidelines means the MCC ''Guidance on Quarterly MCA Disbursement Request and Reporting Package'' posted by MCC on the MCC Web site or otherwise publicly made available.

SC has the meaning provided in paragraph 1(a) of Part A of Annex I.

Service Providers has the meaning provided in paragraph 1 of Schedule 2 to Annex I.

SME means small and medium-sized enterprises.

Social and Gender Integration Plan has the meaning provided in paragraph 3 of Part A of Annex I.

Stakeholders Group has the meaning provided in paragraph 4 of Part C of Annex I.

SUN has the meaning provided in paragraph 4 of Schedule 2 to Annex I.

Supplemental Agreement means any agreement between: (a) the Government (or any Government affiliate) and MCC (including, but not limited to, the PIA); or (b) MCC and/or the Government (or any Government affiliate), on the one hand, and any third party, on the other hand, including any of the Providers, in each case, setting forth the details of any funding, implementing or other arrangements in furtherance of and in compliance with this Compact.

Supply Side Activity has the meaning provided in paragraph 1 of Schedule 2 to Annex I.

Target has the meaning provided in paragraph 3(a) of Annex III.

Targeted Gender Activities has the meaning provided in paragraph 3 of Part A of Annex I.

Taxes has the meaning provided in Section 2.8(a).

Technical Assistance and Oversight Activity has the meaning provided in paragraph 1 of Schedule 1 to Annex I.

Training Program has the meaning provided in paragraph 1(b)(i) of Schedule 2 to Annex I.

Transfer Agreement has the meaning provided in paragraph 1 of Schedule 2 to Annex I.

United States Dollars or *US$* means the lawful currency of the United States of America.

USAID has the meaning provided in paragraph 5 of Schedule 1 to Annex I.

U.S. Government means the government of the United States of America.

[FR Doc. 2011–30706 Filed 11–28–11; 8:45 am]

BILLING CODE 9211–03–P

NATIONAL LABOR RELATIONS BOARD

Order Contingently Delegating Authority to the Chairman, the General Counsel, and the Chief Administrative Law Judge

AGENCY: National Labor Relations Board.

ACTION: Notice of Order Contingently Delegating Authority to the Chairman, the General Counsel, and the Chief Administrative Law Judge.

SUMMARY: The National Labor Relations Board has issued an Order contingently delegating to the General Counsel authority over the appointment, transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge of a Subregional Office, and over the establishment, transfer or elimination of any Regional or Subregional Office, subject to the right of any sitting Board Member to request full-Board consideration of any particular decision.[1] The Order also contingently delegates to the Chairman and General Counsel the authority to jointly determine the apportionment and allocation of funds and/or the establishment of personnel ceilings within the Agency, subject to the right of any sitting Board Member to request full-Board consideration of any particular decision. Finally, the Order contingently delegates to the Chief Administrative Law Judge authority over the appointment, transfer, demotion, or discharge of any Administrative Law Judge, subject to the right of any sitting Board Member to request full-Board consideration of any particular decision. These delegations shall become effective during any time at which the Board has fewer than three Members and shall cease to be effective whenever the Board has at least three Members.

DATES: This Order is effective November 22, 2011.

FOR FURTHER INFORMATION CONTACT: Lester A. Heltzer, Executive Secretary, National Labor Relations Board, 1099 14th Street NW., Washington, DC 20570, (202) 273–1067 (this is not a toll-free number), 1–(866) 315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The National Labor Relations Board anticipates that in the near future it may, for a temporary period, have fewer than three Members of its full complement of five Members.[2] The Board also recognizes that it has a continuing responsibility to fulfill its statutory obligations in the most effective and efficient manner possible. To assure that the Agency will be able to meet its obligations to the public to the greatest extent possible, the Board has decided to temporarily delegate certain authority to the Chairman, the General Counsel and to the Chief Administrative Law Judge as described below, subject to the right of any sitting Board Member to request full-Board consideration of any particular decision. These delegations shall be effective during any time at which the Board has fewer than three Members and are made under the authority granted to the Board under sections 3, 4, 6, and 10 of the National Labor Relations Act.

Accordingly, the Board delegates to the General Counsel authority over the appointment, transfer, demotion, or discharge of any Regional Director or of any Officer-in-Charge of a Subregional Office, and over the establishment, transfer or elimination of any Regional or Subregional Office, subject to the right of any sitting Board Member to request full-Board consideration of any particular decision. In the absence of a request by any sitting Board Member for full-Board consideration of a particular decision(s), the decision(s) of the General Counsel will become final 30 days after the then-sitting Board Members are notified thereof. The Board also delegates to the Chairman and General Counsel the authority to jointly

[1] For the purposes of this notice ''full-Board consideration'' means consideration by a Board comprised of at least three members.

[2] The Board now has three Members, one of whom, Member Becker, is in recess appointment which will expire at the sine die adjournment of the current session of Congress.

determine the apportionment and allocation of funds and/or the establishment of personnel ceilings within the Agency, subject to the right of any sitting Board Member to request full-Board consideration of any particular decision. In the absence of a request by any sitting Board Member for full-Board consideration of a particular decision(s), the decision(s) of the Chairman and the General Counsel will become final seven days after the then-sitting Board Members are notified thereof. Finally, the Board delegates to the Chief Administrative Law Judge authority over the appointment, transfer, demotion, or discharge of any Administrative Law Judge, subject to the right of any sitting Board Member to request full-Board consideration of any particular decision. In the absence of a request by any sitting Board Member for full-Board consideration of a particular decision(s), the decision(s) of the Chief Administrative Law Judge will become final 30 days after the then-sitting Board Members are notified thereof.

These delegations shall become and remain effective during any time at which the Board has fewer than three Members, unless and until revoked by the Board.

These delegations relate to the internal management of the National Labor Relations Board and are therefore, pursuant to 5 U.S.C. 553, exempt from the notice and comment requirements of the Administrative Procedure Act. Further, public notice and comment is impractical because of the immediate need for Board action. The public interest requires that this Order take effect immediately.

All existing delegations of authority to the General Counsel and to staff in effect prior to the date of this Order remain in full force and effect. For the reasons stated above, the Board finds good cause to make this order effective immediately in accordance with 5 U.S.C. 553(d).

Authority: Sections 3, 4, 6, and 10 of the National Labor Relations Act, 29 USC Sec. 3, 4, 6, and 10.

Signed in Washington, DC, November 22, 2011.

Mark Gaston Pearce,

Chairman.

[FR Doc. 2011–30699 Filed 11–28–11; 8:45 am]

BILLING CODE 7545–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, December 13, 2011.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The ONE item is open to the public.

MATTER TO BE CONSIDERED:

8245A Highway Accident Report—Multivehicle Collision, Interstate 44 Eastbound, Gray Summit, Missouri, August 5, 2010

News Media Contact: Telephone: (202) 314–6100.

The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 by Friday, December 9, 2011.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *http://www.ntsb.gov*.

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403 or by email at *bingc@ntsb.gov*.

Dated: Friday, November 25, 2011.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2011–30842 Filed 11–25–11; 4:15 pm]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0272]

Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Westinghouse AP1000 Pressurized-Water Reactors

AGENCY: United States Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft NUREG, NUREG–2103, Revision 0, ''Knowledge and Abilities Catalog for Nuclear Power Plant Operators: Westinghouse AP1000 Pressurized-Water Reactors.

DATES: Submit comments by December 31, 2016. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Please include Docket ID NRC–2011–0272 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0272. Address questions about NRC dockets to Carol Gallagher (301) 492–3668; email *Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at (301) 492–3446.
- *Fax comments to:* RADB at (301) 492–3446.

FOR FURTHER INFORMATION CONTACT: James Kellum, Division of Construction Inspection and Operational Programs, Office of New Reactors, TWFN Mail Stop 07–D24, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: (301) 415–5305, email: *Jim.Kellum@nrc.gov* or Richard Pelton, Division of Construction Inspection and Operational Programs, Office of New Reactors, TWFN Mail Stop 07–D24, U.S. Nuclear Regulatory Commission Washington, DC 20555–0001, *Phone:* (301) 415–1028, *email: Rick.Pelton@nrc.gov.*

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and

have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft NUREG is available electronically under ADAMS Accession No. ML11307A367. The draft NUREG will also be accessible through the NRC's public site under draft NUREGs for comment.

• *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0272.

Discussion

The draft NUREG provides the basis for the development of content-valid licensing examinations for reactor operators (ROs) and senior reactor operators (SROs). The examinations developed using this Catalog along with the Operator Licensing Examination Standards for Power Reactors (NUREG–1021) will sample the topics listed under Title 10 of the *Code of Federal Regulations* (10 CFR) Part 55.

Dated at Rockville, Maryland, this 16th day of November, 2011.

For the Nuclear Regulatory Commission.

Veronica Rodriguez,

Acting Chief, Operator Licensing and Human Performance Branch, Division of Construction Inspection and Operational Programs, Office of New Reactors.

[FR Doc. 2011–30737 Filed 11–28–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–410; NRC–2010–0117]

Nine Mile Point Nuclear Station, LLC, Nine Mile Point Nuclear Station, Unit No. 2, Environmental Assessment and Finding of No Significant Impact Related to the Proposed License Amendment To Increase the Maximum Reactor Power Level

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment for Renewed Facility Operating License No. NPF–069, issued to Nine Mile Point Nuclear Station, LLC (NMPNS, the licensee) for operation of the Nine Mile Point, Unit No. 2 (NMP2), located in Oswego, NY, in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.90. Therefore, as required by 10 CFR 51.21, the NRC performed an environmental assessment (EA). Based on the results of the environmental assessment, the NRC is issuing a finding of no significant impact.

The NRC published a draft EA and finding of no significant impact on the proposed action for public comment in the **Federal Register** on March 22, 2010 (75 FR 13600). No comments were received on the draft EA. The NRC staff did not identify any significant impact from the information provided in the licensee's Extended Power Uprate (EPU) application for NMP2 or during the NRC staff's review of other available information; therefore, the NRC staff is documenting its environmental review in this final EA.

Environmental Assessment

Plant Site and Environs

The NMPNS site is in the town of Scriba, in the northwest corner of Oswego County, New York, on the south shore of Lake Ontario. The site is comprised of approximately 900 acres that includes two nuclear reactors and ancillary facilities. NMP2 uses a boiling-water reactor and a nuclear steam supply system designed by General Electric.

Identification of the Proposed Action

By application dated May 27, 2009, the licensee requested an amendment for an EPU for NMP2 to increase the licensed thermal power level from 3,467 MWt to 3,988 MWt, which represents an increase of approximately 15% above the current licensed thermal power and approximately 20% over the original licensed thermal power level. This change in core thermal level requires the NRC to amend the facility's operating license. The operational goal of the proposed EPU is a corresponding increase in electrical output from 1,211 MWe to 1,369 MWe. The proposed action is considered an EPU by NRC because it exceeds the typical 7% power increase that can be accommodated with only minor plant changes. EPUs typically involve extensive modifications to the nuclear steam supply system.

The licensee has implemented several physical changes and upgrades to plant components needed to implement the proposed EPU during the 2010 refueling outage; and it plans to complete all remaining physical modifications during the upcoming refueling outage currently scheduled for spring 2012. The actual power uprate, if approved by the NRC, would occur in a single increase following the 2012 refueling outage.

The Need for the Proposed Action

The proposed action would provide NMPNS with the flexibility to increase the potential electrical output of NMP2 and to supply low cost, reliable, and efficient electrical generation to New York State and the region. The additional 158 MWe would be enough to power approximately 174,000 homes. The proposed EPU at NMP2 would contribute to meeting the goals and recommendations of the New York State Energy Plan for maintaining the reserve margin and reducing greenhouse gas emissions with low cost, efficient, and reliable electrical generation. The proposed action provides the licensee with the flexibility to increase the potential electrical output of NMP2 to New York State and the region from its existing power station without building a new electric power generation station or importing energy from outside the region.

Environmental Impacts of the Proposed Action

As part of the licensing process for NMP2, the NRC published a Final Environmental Statement (FES) in May 1985. The NRC staff noted that the impact of any activity authorized by the license would be encompassed by the overall action evaluated in the FES for the operation of NMP2. In addition, the NRC evaluated the environmental impacts of operating NMP2 for an additional 20 years beyond its current operating license, and determined that the environmental impacts of license renewal were small. The NRC staff's evaluation is contained in NUREG–1437, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plant, Supplement 24,

Regarding Nine Mile Point Nuclear Station, Units 1 and 2'' (SEIS–24) issued in May 2006 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML061290310). The NRC staff used information from the licensee's license amendment request, the FES, and the SEIS–24 to perform its EA for the proposed EPU.

The NMP2 EPU is expected to be implemented without making extensive changes to buildings or plant systems that directly or indirectly interface with the environment. All necessary modifications would be performed in existing buildings at NMP2. With the exception of the high-pressure turbine rotor replacement, the required modifications are generally small in scope. Other modifications include providing additional cooling for some plant systems, modifications to feedwater pumps, modifications to accommodate greater steam and condensate flow rates, and instrumentation upgrades that include minor items such as replacing parts, changing setpoints and modifying software.

The sections below describe the non-radiological and radiological impacts in the environment that may result from the proposed EPU.

Non-Radiological Impacts

Land Use and Aesthetic Impacts

Potential land use and aesthetic impacts from the proposed EPU include impacts from plant modifications at NMP2. While some plant components would be modified, most plant changes related to the proposed EPU would occur within existing structures, buildings, and fenced equipment yards housing major components within the developed part of the site. No new construction would occur outside of existing facilities and no expansion of buildings, roads, parking lots, equipment lay-down areas, or transmission facilities would be required to support the proposed EPU.

Existing parking lots, road access, equipment lay-down areas, offices, workshops, warehouses, and restrooms would be used during plant modifications. Therefore, land use conditions would not change at NMP2. Also, there would be no land use changes along transmission lines (no new lines would be required for the proposed EPU), transmission corridors, switch yards, or substations.

Since land use conditions would not change at NMP2, and because any land disturbance would occur within previously disturbed areas, there would be little or no impact to aesthetic resources in the vicinity of NMP2. Therefore, there would be no significant impact from EPU-related plant modifications on land use and aesthetic resources in the vicinity of NMP2.

Air Quality Impacts

Air quality within the Nine Mile Point area is generally considered good, with exceptions occurring for designated ozone nonattainment areas. NMPNS is located in Oswego County which is part of the Central Air Quality Control Region covered by Region 7 of the New York State Department of Environmental Conservation. With the exception of ozone, this region is designated as being in attainment or unclassifiable for all criteria pollutants in the Environmental Protection Agency's (EPA's) 40 CFR 81.333.

There are approximately 1,000 people employed on a full-time basis. This workforce is typically augmented by an additional 1,000 persons on average during regularly scheduled refueling outages. For the EPU work in 2012, the workforce numbers would be somewhat larger than a routine outage, but this increase would be of short duration. During implementation of the EPU at NMP2, some minor and short duration air quality impacts would occur. The main source of the air emissions would be from the vehicles of the additional outage workers needed for the EPU work. The majority of the EPU work would be performed inside existing buildings and would not impact air quality. Operation of the reactor at the increased power level would not result in increased non-radioactive emissions that would have a significant impact on air quality in the region. Therefore, there would be no significant impact on air quality during and following implementation of the proposed EPU.

Water Use Impacts

Groundwater

NMP2 does not use groundwater in any of its water systems and has no plans for direct groundwater use in the future. There are no production wells on the site for either domestic-type water uses or industrial use. Potable water in the area is supplied to residents either through the Scriba Water District, which receives its water from the City of Oswego, or from private wells.

Because of variations in the hydrogeological characteristics of the ground under the reactor building foundation, a permanent dewatering system is required for NMP2. The system consists of perimeter drains and two sumps located below the NMP2 reactor building. The dewatering system is designed to maintain the water table below the reactor building foundation at a stable level. The licensee asserts that implementation of the proposed EPU will not result in a change to the groundwater use program at NMP2. Therefore, there would be no significant impact on groundwater resources following implementation of the proposed EPU.

Surface Water

NMP2 uses surface water from Lake Ontario for the service water system and for a fish diversion system. As described in the licensee's application, the cooling water system for NMP2 consists of a circulating water system, which circulates cooling water through the main condensers to condense steam after it passes through the turbine, and a service water system which circulates cooling water through heat exchangers that serve various plant components. The service water system for NMP2 is a once-through system withdrawing water from Lake Ontario. However, the circulating water system is a closed-cycle system that uses a natural draft cooling tower. A portion of the cooling water from the service water discharge is used to replace evaporative and drift losses from the cooling tower. NMP2 has its own cooling water intake and discharge structures located offshore in Lake Ontario. The intake and discharge structures are located approximately 950 feet and 1,050 feet offshore. The discharge structure is a two-port diffuser located 3 feet above the bottom approximately 1,500 feet offshore. Because the NMP2 circulating water system is closed-cycle, flows are substantially less than for a typical open-cycle system. During normal operation, an average total flow of 53,600 gallons per minute (gpm) is withdrawn from Lake Ontario, 38,675 gpm for the service water system and, through the plant's service water discharge, makeup to the circulating water system to replace evaporation and drift losses from the cooling tower, and 14,925 gpm for operation of the fish diversion system. Discharge flow from NMP2 ranges from 23,055 gpm to 35,040 gpm during operation.

The licensee estimates that cooling tower makeup water flow post-EPU would increase by approximately 2,000–2,500 gpm; from approximately 18,000 gpm to approximately 20,000 gpm. This increase represents consumptive use of water from Lake Ontario (*e.g.*, due to increased evaporative losses). Because the cooling tower makeup water flow comes from the service water discharge, this number represents water that will

not be returned to Lake Ontario. This loss is not significant when compared to the large amount of water that routinely flows out of Lake Ontario (approximate long-term average of 107,700,000 gpm). Therefore, there would be no significant impact on surface water resources following implementation of the proposed EPU.

Aquatic Resources Impacts

The potential impacts to aquatic biota from the proposed action could include impingement, entrainment, and thermal discharge effects. NMP2 has a fish diversion system at the onshore facility to reduce potential impingement of fish on the intake screens. The proposed EPU is expected to result in a 2,000–2,500 gpm increase in cooling tower makeup. However, this makeup water is drawn entirely from the plant's service water discharge, and service water intake flows would remain unchanged by the EPU. As a result, there would be no increase in cooling water withdrawn from the NMP2 intake structure. Therefore, there would be no increase in impingement from the proposed EPU and the increase in entrainment losses, if any, would be very small, and would remain consistent with the NRC's conclusion in the SEIS–24, that the aquatic impacts as a result of NMP2 operation during the term of license renewal would be small.

The issues of discharge water temperature and chemical discharges are regulated by the State of New York with limits specified in the State Pollutant Discharge Elimination System (SPDES) permit. According to the licensee, the temperature of the discharge water is expected to increase by a maximum of 2 °F as a result of the EPU. In addition, a modeling study performed by the licensee in 2007 of the thermal plume of NMP2 indicated only a minor increase in thermal discharge would be expected from the EPU. Technical reviews and analyses performed by the licensee indicate that the combined service water and blowdown discharge from NMP2 would remain compliant with current limits in the SPDES permit for thermal and physical parameters during both normal operation and normal shutdown conditions.

The circulating water system and service water system for NMP2 are treated with biocides to control biofouling from zebra mussels (*Dreissena polymorpha*) and other organisms, and with other chemical additives to control scaling and corrosion of system components. The licensee's application notes that several of the chemicals used for the above treatments are subject to specific limits in the NMP2 SPDES permit.

Therefore, there would be no significant adverse impacts to the aquatic biota from entrainment, impingement, and from thermal discharges for the proposed action.

Terrestrial Resources Impacts

The NMPNS site consists of approximately 900 acres, with over 1 mile of shoreline on Lake Ontario. Approximately 188 acres are used for power generation and support facilities. Much of the remaining area is undeveloped, consisting largely of deciduous forest with some old field and shrub land areas that reflect continuing succession of old fields to secondary forest. As previously discussed in the land use and aesthetic section, the proposed action would not affect land use at NMP2. Therefore, there would be no significant impacts on terrestrial biota associated with the proposed action.

Threatened and Endangered Species Impacts

Animal species found on the NMP2 site are representative of those found within disturbed landscapes of the lower Great Lakes region, and include white-tailed deer and a variety of smaller mammals, reptiles and amphibians. Correspondence between the licensee and the U.S. Fish and Wildlife Service (FWS) in connection with the NMPNS license renewal environmental review indicated that no federally endangered, threatened, or candidate aquatic species are likely to reside in the vicinity of the NMP2 site. According to the licensee's application and information in the SEIS–24, with the exception of the Indiana bat (*Myotis sodalis*) and occasional transient individuals of the piping plover (*Charadrius melodus*) and the bald eagle (*Haliaeetus leucocephalus*) (now delisted), no other species listed by the FWS as endangered or threatened are likely to reside on the NMPNS site or along Nine Mile Point to the Clay transmission corridor. However, recent onsite surveys conducted by the licensee indicate that there is low likelihood of occurrence for Indiana bat and piping plover because there is no suitable habitat on the site or along the transmission corridor. Regardless, planned construction-related activities related to the proposed EPU primarily involve changes to existing structures, systems, and components internal to existing buildings, would not involve earth disturbance. While traffic and worker activity in the developed parts of the plant site during the 2012 refueling outage would be somewhat greater than a normal refueling outage, the potential impact on terrestrial wildlife would be minor and temporary.

Since there are no planned changes to the terrestrial wildlife habitat on the NMPNS site from the proposed EPU and the potential impacts from worker activity would be minor and temporary, there would be no significant impacts to any threatened or endangered species for the proposed action.

Historic and Archaeological Resources Impacts

As reported in the SEIS–24, the NRC reviewed historic and archaeological site files in New York, and confirmed that historic and archaeological resources have been identified in the vicinity of NMP2, but no archaeological and historic architectural sites have been recorded on the licensee's site. In addition, the New York State Historic Preservation Office confirmed that while there are no known archaeological sites within the plant site, the Preservation Office considers Nine Mile Point to be an area that is sensitive for cultural resources because of its environmental setting. However, as reported in the SEIS–24, a site visit performed by NRC staff in 2004 found the presence of archaeological remains associated with several mapped historic locations within the plant lands. For the proposed EPU, the licensee asserts that there would be no new land disturbance activities and there are no plans to construct new facilities or modify existing access roads, parking areas, or equipment lay-down areas. Therefore, there would be no significant impact from the proposed EPU on historic and archaeological resources at NMP2.

Socioeconomic Impacts

Potential socioeconomic impacts from the proposed EPU include temporary increases in the size of the workforce at NMP2 and associated increased demand for public services and housing in the region. The proposed EPU could also increase tax payments due to increased power generation.

Currently, there are approximately 1,000 full-time workers employed at NMPNS, residing primarily in Oswego County and Onondaga County, New York. During refueling outages approximately every 12 months at NMPNS (every 24 months for each unit) the number of workers at NMPNS increases by as many as 1,000 workers for 30 to 40 days.

As stated in the licensee's application dated May 27, 2009, the proposed EPU was expected to temporarily increase the size of the workforce at NMPNS

during the spring 2010 and 2012 refueling outages. The greatest increase would occur during the spring 2012 outage when the majority of the EPU-related modifications would take place. Once completed, the size of the refueling outage workforce at NMPNS would return to normal levels and would remain relatively the same during future refueling outages. The size of the regular plant operations workforce would be unaffected by the proposed EPU.

Most of the EPU plant modification workers would be expected to relocate temporarily to Oswego and Onondaga counties, resulting in short-term increases in the local population along with increased demands for public services and housing. Because plant modification work would be short-term, most workers would stay in available rental homes, apartments, mobile homes, and camper-trailers. Therefore, a temporary increase in plant employment for a short duration would have little or no noticeable effect on the availability of housing in the region.

NMPNS currently pays annual real estate property taxes to the City of Oswego School District, Oswego County, and the Town of Scriba. The annual amount of property taxes paid by NMPNS could increase due to ''incentive payments'' should NMP2 megawatt production exceed negotiated annual benchmarks as power generation increases. Future property tax agreements with Oswego County, the Town of Scriba, and the City of Oswego could also take into account the increased value of NMP2 as a result of the EPU implementation and increased power generation.

Due to the short duration of EPU-related plant modification activities, there would be little or no noticeable effect on tax revenues generated by temporary workers residing in Oswego County and Onondaga County. Therefore, there would be no significant adverse socioeconomic impacts from EPU-related plant modifications and operations under EPU conditions in the vicinity of NMP2.

Environmental Justice Impacts

The environmental justice impact analysis evaluates the potential for disproportionately high and adverse human health and environmental effects on minority and low-income populations that could result from activities associated with EPU operation at NMP2. Environmental effects may include biological, cultural, economic, or social impacts. Minority and low-income populations are subsets of the general public residing in the vicinity of NMP2, and all are exposed to the same health and environmental effects generated from activities at NMP2.

Environmental Justice Impact Analysis

The NRC staff considered the demographic composition of the area within a 50-mile (80-km) radius of NMP2 to determine the location of minority and low-income populations and whether they may be affected by the proposed action.

Minority populations in the vicinity of NMP2, according to the U.S. Census Bureau data for 2000, indicate that 11.8% of the population (approximately 908,000 individuals) residing within a 50-mile (80-km) radius of NMP2 identified themselves as minority individuals. The largest minority group was Black or African American (approximately 63,000 persons or 7.0%), followed by Hispanic or Latino (approximately 22,000 persons or about 2.4%). According to the U.S. Census Bureau, about 3.5% of the Oswego County population identified themselves as minorities, with persons of Hispanic or Latino origin comprising the largest minority group (1.3%). According to census data, the 3-year average estimate for 2006–2008 for the minority population of Oswego County, as a percent of total population, increased to 4.4%.

According to 2000 census data, approximately 19,600 families and 105,000 individuals (approximately 8.4 and 11.5%, respectively) residing within a 50-mi (80-km) radius of NMP2 were identified as living below the Federal poverty threshold in 1999. The 1999 Federal poverty threshold was $17,029 for a family of four.

According to census data in the 2006–2008 American Community Survey 3-Year Estimates, the median household income for New York was $55,401, while 13.8% of the State population and 10.5% of families were determined to be living below the Federal poverty threshold. Oswego County had a lower median household income average ($43,643) and higher percentages (16.0%) of individuals and families (11.2%) living below the poverty level, respectively.

Potential impacts to minority and low-income populations would mostly consist of environmental and socioeconomic effects (*e.g.*, noise, dust, traffic, employment, and housing impacts). However, noise and dust impacts would be short-term and limited to onsite activities. Minority and low-income populations residing along site access roads could experience increased commuter vehicle traffic during shift changes. Increased demand for inexpensive rental housing during the refueling outages that include EPU-related plant modifications could disproportionately affect low-income populations, however, due to the short duration of the EPU-related work and the expected availability of rental properties, impacts to minority and low-income populations would be short-term and limited.

Based on this information and the analysis of human health and environmental impacts presented in this EA, there would be no disproportionately high and adverse human health and environmental effects on minority and low-income populations residing in the vicinity of NMP2.

Non-radiological Impacts Summary

As discussed above, the proposed EPU would not result in any significant non-radiological impacts. Table 1 summarizes the non-radiological environmental impacts of the proposed EPU at NMP2.

TABLE 1—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS

Land Use	No significant impact on land use conditions and aesthetic resources in the vicinity of NMP2.
Air Quality	Temporary short-term air quality impacts from vehicle emissions related to the workforce. No significant impacts to air quality.
Water Use	Water use changes resulting from the EPU would be relatively minor. No significant impact on groundwater or surface water resources.
Aquatic Resources	No significant impact to aquatic resources due to impingement, entrainment, or thermal discharge.
Terrestrial Resources	No significant impact to terrestrial resources.
Threatened and Endangered Species	No significant impact to Federally listed species.
Historic and Archaeological Resources	No significant impact to historic and archaeological resources on site or in the vicinity of NMP2.

TABLE 1—SUMMARY OF NON-RADIOLOGICAL ENVIRONMENTAL IMPACTS—Continued

Socioeconomics	No significant socioeconomic impacts from EPU-related temporary increase in workforce.
Environmental Justice	No disproportionately high and adverse human health and environmental effects on minority and low-income populations in the vicinity of NMP2.

Radiological Impacts

Radioactive Gaseous and Liquid Effluents, Direct Radiation Shine, and Solid Waste

Nuclear power plants use waste treatment systems to collect, process, recycle, and dispose of gaseous, liquid, and solid wastes that contain radioactive material in a safe and controlled manner within NRC and EPA radiation safety standards. Operation at the proposed EPU conditions would not require any physical changes to the gaseous, liquid, or solid waste systems.

Radioactive Gaseous Effluents

Radioactive gaseous wastes principally include radioactive gases extracted from the steam condenser offgas system and the turbine gland seal. The radioactive gaseous waste management system uses holdup (*i.e.*, time delay to achieve radioactive decay) and filtration (*i.e.*, high efficiency filters) to reduce the gaseous radioactivity that is released into the environment. The licensee's evaluation concluded that the proposed EPU would not change the radioactive gaseous waste licensing basis and the system's design criteria. In addition, the existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive gaseous releases within the dose limits of 10 CFR 20.1302, Appendix I to 10 CFR part 50, and 40 CFR part 190.

Radioactive Liquid Effluents

Radioactive liquid wastes include liquids from various equipment drains, floor drains, containment sumps, chemistry laboratory, laundry drains, and other sources. An evaluation performed by the licensee demonstrates that implementation of the proposed EPU would not significantly increase the inventory of liquid normally processed by the liquid waste management system. This conclusion is based on the fact that the radioactive liquid waste system functions are not changing and the volume inputs would increase less than 10%, which is not an appreciable increase when compared to the liquid radioactive waste system capacity. The proposed EPU would result in a small increase in the equilibrium radioactivity in the reactor coolant which in turn would impact the concentrations of radionuclides entering the waste disposal systems.

Since the liquid volume does not increase appreciably, and the radiological sources remain bounded by the existing design basis, the current design and operation of the radioactive liquid waste system will accommodate the effects of EPU with no changes. In addition, the existing equipment and plant procedures that control radioactive releases to the environment will continue to be used to maintain radioactive liquid releases within the dose limits of 10 CFR 20.1302, Appendix I to 10 CFR part 50, and 40 CFR part 190.

Occupational Radiation Dose at EPU Conditions

In-plant radiation levels and associated occupational doses are controlled by the NMPNS Radiation Protection Program to ensure that internal and external radiation exposures to station personnel, contractor personnel, and the general population will be as low as is reasonably achievable (ALARA). For plant workers, the program monitors radiation levels throughout the plant to establish work controls, training, temporary shielding, and protective equipment requirements so that worker doses will remain within the dose limits of 10 CFR Part 20 and ALARA.

The licensee's analysis indicate that in-plant radiation sources are anticipated to increase linearly with the increase in core power level (approximately 15% greater than the current licensed thermal power), except for nitrogen-16 (N–16) which is expected to increase approximately 30% due to increased steam flow and pressure in some components. Shielding is used throughout NMP2 to protect personnel against radiation emanating from the reactor and the auxiliary systems.

For conservatism, many aspects of NMP2 were originally designed for higher-than-expected radiation sources. NMPNS has determined that the current shielding design is adequate for the increase in radiation levels that may occur after the proposed EPU. Thus, the increase in radiation levels would not affect radiation zoning or shielding in the various areas of NMP2 because of the conservatism in the original design. Therefore, no changes are planned to the plant's shielding design and the ALARA program would continue in its current form.

Offsite Doses at EPU Conditions

The primary sources of normal operation offsite dose to members of the public at NMP2 are airborne releases from the Offgas System and direct dose from gamma radiation (skyshine) from the plant turbines containing radioactive material. During reactor operation, the reactor coolant passing through the core region becomes radioactive as a result of nuclear reactions. The dominant radiation source in the coolant passing through the turbine is N–16. The activation of the water in the reactor core is in approximate proportion to the increase in thermal power. However, while the magnitude of the radioactive source production increases in proportion to reactor power, the concentration in the steam remains nearly constant. This is because the increase in activation production is balanced by the increase in steam flow. The implementation of the proposed EPU could increase components of offsite dose due to releases of gaseous and liquid effluents by up to 20%. The component of offsite dose due to N–16 radiation emanating from the turbine could increase by as much as 30%. The licensee calculated that the increase in offsite dose from radioactive gaseous and liquid effluents, and skyshine from NMP2 under EPU operating conditions is expected to be less than 1 mrem (0.01mSv) per year. The historical (2003–2007) annual doses to a member of the public located outside the NMPNS site boundary from NMP2's radioactive emissions ranged from 0.18 mrem (0.0018 mSv) to 2.01 mrem (0.0201 mSv). These doses are well below the 10 CFR part 20 annual dose limit of 100 mrem (1.0 mSv) for members of the public and the EPA's 40 CFR part 190 annual dose standard of 25 mrem (0.25 mSv). Therefore, while the offsite dose to members of the public under EPU conditions is expected to increase slightly, it is expected to remain within regulatory limits. Based on the above, the potential increase in offsite radiation dose to members of the public would not be significant.

Radioactive Solid Wastes

The radioactive solid waste system collects, processes, packages, monitors,

and temporarily stores radioactive dry and wet solid wastes prior to shipment offsite for disposal. Solid radioactive waste streams include filter sludge, spent ion exchange resin, and dry active waste (DAW). DAW includes paper, plastic, wood, rubber, glass, floor sweepings, cloth, metal, and other types of waste routinely generated during site maintenance and outages. The EPU does not generate a new type of waste or create a new waste stream. Therefore, the types of radioactive waste that require shipment are unchanged. The licensee's evaluation indicates that the effect of the EPU on solid waste is primarily from increased input to the reactor water cleanup system (WCS) and condensate demineralizers. The increased use of the WCS and condensate demineralizers is expected to increase the volume of spent ion exchange resins and filter sludge. The licensee's analysis indicates that the estimated increase in solid radioactive waste is approximately 7%, and can be handled by the existing solid waste management system without modification. Therefore, the impact from the increased volume of solid radioactive waste generated under conditions of the proposed EPU would not be significant.

Spent Nuclear Fuel

Spent fuel from NMP2 is stored in the plant's spent fuel pool. The additional energy requirements for the proposed EPU would be met by an increase in fuel enrichment, an increase in the reload fuel batch size, and/or changes in the fuel loading pattern to maintain the desired plant operating cycle length. NMP2 is currently licensed to use uranium-dioxide fuel that has a maximum enrichment of 4.95% by weight uranium-235. The typical average enrichment is approximately 4.20% by weight uranium-235. For the proposed action, the core design would use a somewhat higher fuel enrichment (4.36%), which remains within the licensed maximum enrichment. The EPU fuel batch size would increase from 276 bundles to 352 bundles. The licensee's fuel reload design goals would maintain the NMP2 fuel cycles within the limits bounded by the impacts analyzed in 10 CFR Part 51, Table S–3—Table of Uranium Fuel Cycle Environmental Data and Table S—4 Environmental Impact of Transportation of Fuel and Waste to and from One Light-Water-Cooled Nuclear Power Reactor, as supplemented by NUREG–1437, Volume 1, Addendum 1, ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants, Main Report, Section 6.3—Transportation Table 9.1, Summary of findings on NEPA issues for license renewal of nuclear power plants.'' Therefore, there would be no significant impacts resulting from spent nuclear fuel.

Postulated Design-Basis Accident Doses

Postulated design-basis accidents are evaluated by both the licensee and the NRC staff to ensure that NMP2 can withstand normal and abnormal transients and a broad spectrum of postulated accidents, without undue hazard to the health and safety of the public. The NRC staff previously evaluated and approved an amendment to the NMP2 license (Technical Specification Amendment No. 125, dated May 29, 2008, ADAMS Accession No. ML081230439) which permitted full implementation of the Alternative Source Term (AST) as described in NRC Regulatory Guide 1.183, ''Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors.'' The licensee's AST analysis was performed at the proposed EPU power level of 3,988 MWt so that the design-basis accident analyses would be applicable to the proposed EPU being evaluated here. In its approval of TS Amendment No. 125, the NRC staff concluded that (1) There is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the NRC's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public. Therefore, there would be no significant increase in the impact resulting from a postulated accident.

Radiological Impacts Summary

As discussed above, the proposed EPU would not result in any significant radiological impacts. Table 2 summarizes the radiological environmental impacts of the proposed EPU at NMP2.

TABLE 2—SUMMARY OF RADIOLOGICAL ENVIRONMENTAL IMPACTS

Radioactive Gaseous Effluents	Amount of additional radioactive gaseous effluents generated would be handled by the existing system.
Radioactive Liquid Effluents	Amount of additional radioactive liquid effluents generated would be handled by the existing system.
Occupational Radiation Doses	Occupational doses would continue to be maintained within NRC limits.
Offsite Radiation Doses	Radiation doses to members of the public would remain below NRC and EPA radiation protection standards.
Radioactive Solid Waste	Amount of additional radioactive solid waste generated would be handled by the existing system.
Spent Nuclear Fuel	The spent fuel characteristics will remain within the bounding criteria used in the impact analysis in 10 CFR Part 51, Table S–3 and Table S–4.
Postulated Design-Basis Accident Doses	Calculated doses for postulated design-basis accidents would remain within NRC limits.

Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed EPU (*i.e.*, the ''no-action'' alternative). Denial of the application would result in no change in the current environmental impacts. However, if the EPU were not approved for NMP2, other agencies and electric power organizations may be required to pursue other means, such as fossil fuel or alternative fuel power generation, to provide electric generation capacity to offset future demand. Construction and operation of such a fossil-fueled or alternative-fueled plant may create impacts in air quality, land use, and waste management significantly greater than those identified for the proposed EPU at NMP2. Furthermore, the proposed EPU does not involve environmental impacts that are significantly different from those originally identified in the NMP2 FES and the SEIS–24.

Alternative Use of Resources

This action does not involve the use of any different resources than those previously considered in the FES for NMP2, NUREG–1085, dated May 1985 and Final Supplemental Environmental

Impact Statement (NUREG–1437, Supplement 24) dated May 2006.

Agencies and Persons Consulted

In accordance with its stated policy, on March 2, 2010, the NRC staff consulted with the State of New York official, Alyse L. Peterson of the New York State Energy Research and Development Authority regarding the environmental impact of the proposed action. The State official had no comments.

Finding Of No Significant Impact

On the basis of the details provided in the EA, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated May 27, 2009,[1] as supplemented by additional letters.[2] These documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or send an e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, Maryland, this 17th day of November 2011.

For the Nuclear Regulatory Commission.

Richard V. Guzman,

Senior Project Manager, Plant Licensing Branch I–1, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–30733 Filed 11–28–11; 8:45 am]

BILLING CODE 7590–01–P

[1] Agencywide Documents Access and Management System (ADAMS) Accession Package No. ML091610091.

[2] August 28, 2009 (ML092460610); December 23, 2009 (ML100190089); February 19, 2010 (ML100550598); April 16, 2010 (ML101120658); May 7, 2010 (ML101380306); June 3, 2010 (ML101610222); June 30 (ML101900471); July 9, 2010 (ML101950502); July 30, 2010 (ML102170191); October 8, 2010 (ML102920339); October 28, 2010 (ML103080208); November 5, 2010 (ML103130515); December 10, 2010 (ML103500520); December 13, 2010 (ML103500363); January 19, 2011 (ML110250723); January 31, 2011 (ML110400373): February 4, 2011 (ML110460158); March 23, 2011 (ML110880300); May 9, 2011 (ML111370654); June 13, 2011 (ML111710135); July 15, 2011 (ML11207A069); August 5, 2011 (ML11207A069); August 19, 2011 (ML11242A044); September 23, 2011 (ML112700199); October 27, 2011 (ML113050319); and November 1, 2011 (ML113120336).

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0274]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 3, 2011 to November 16, 2011. The last biweekly notice was published on November 15, 2011 (76 FR 70768).

ADDRESSES: Please include Docket ID NRC–2011–0274 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0274. Address questions about NRC dockets to Carol Gallagher, *telephone:* (301) 492–3668; *email: Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*
- *Federal Rulemaking Web site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0274.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the requestor/petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the requestor/petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the

Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:* Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*

Calvert Cliffs Nuclear Power Plant, LLC, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland;

Date of amendment request: August 8, 2011.

Description of amendment request: The amendment would modify Technical Specification 3.8.1, ''AC Sources—Operating,'' Surveillance Requirement (SR) 3.8.1.11 by revising the required power factor value to be achieved by the diesel generators (DGs) during conduct of the surveillance test. The proposed change would also modify the existing note in SR 3.8.1.11 to address offsite power grid conditions that could exist during surveillance testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No.

The first part of the proposed change to SR 3.8.1.11 corrects the current non-conservative DG power factor value and aligns it with the power factor value calculated in the design basis calculation for the worst case design basis accident electrical loads. This part of

the proposed change does not affect any analyzed accident initiators, nor does it affect the units' ability to successfully respond to any previously evaluated accident. Testing at a more conservative power factor value better demonstrates the DG's ability to handle expected electrical loads during worst case design basis accidents. In addition, this part of the proposed change does not alter any existing radiological assumptions used in the accident evaluations nor does it change the operation or maintenance performed on operating equipment.

The second part of the proposed change modifies an existing note in SR 3.8.1.11 to allow the required DG power factor not to be achieved during testing when certain grid conditions exist. This exception exists to prevent testing the DG in a condition that might do damage to the DG or cause bus voltage to exceed voltage limits. This proposed change does not affect any analyzed accident initiators, nor does it affect the units' ability to successfully respond to any previously evaluated accident. Additionally there is no affect on any existing radiological assumptions used in the accident evaluations nor does it change the operation or maintenance performed on operating equipment.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No.

The first part of the proposed change to SR 3.8.1.11 corrects the current non-conservative DG power factor value and aligns it with the power factor value calculated in the design basis calculation for the worst case design basis accident electrical loads. Testing to a more conservative power factor better demonstrates the DG ability to handle expected electrical loads during worst case design basis accidents. This part of the proposed change does not involve a modification to the physical configuration of the units nor does it involve any change in the methods governing normal plant operation. The proposed change does not impose any new or different requirements that would introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally there is no change in the types of, or increase in the amounts of, any effluent that may be released offsite and there is no increase in individual or cumulative occupational exposure as a result of this proposed change. As such, this part of the proposed change does not introduce a mechanism for initiating a new or different accident than those previously analyzed.

The second part of the proposed change modifies an existing note in SR 3.8.1.11 to allow the required DG power factor not to be achieved during testing when certain grid conditions exist. This exception exists to prevent testing the DG in a condition that might do damage to the DG or cause bus voltage to exceed voltage limits. This part of the proposed change does not involve a modification to the physical configuration of the units nor does it involve any change in the methods governing normal plant operation. The proposed change does not impose any new or different requirements that would introduce a new accident initiator, accident precursor, or malfunction mechanism. Additionally there is no change in the types or increase in the amounts of any effluent that may be released offsite and there is no increase in the individual or cumulative occupational exposure as a result of this proposed change. As such, this part of the proposed change does not introduce a mechanism for initiating a new or different accident than those previously analyzed.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No.

The first part of the proposed change to SR 3.8.1.11 corrects the current non-conservative DG power factor value and aligns it with the power factor value calculated in the design basis calculation for the worst-case design basis accident electrical loads. Testing to a more conservative power factor more fully demonstrates the DG ability to handle expected electrical loads during worst case design basis accidents. This part of the proposed change does not involve any modification to the physical configuration of the operating units and does not alter equipment operation. As such the safety functions of plant equipment and their response to any analyzed accident scenario are unaffected by this proposed change and thus there is no reduction in any margin of safety.

The second part of the proposed change modifies an existing note in SR 3.8.1.11 to allow the required DG power factor not to be achieved during testing when certain grid conditions exist. This exception exists to prevent testing the DG in a condition that might do damage to the DG or cause bus voltage to exceed voltage limits. This part of the proposed change does not involve any modification to the physical configuration of the operating units and does not alter equipment operation. As such the safety functions of plant equipment and their response to any analyzed accident scenario are unaffected by this proposed change and thus there is no reduction in any margin of safety.

Therefore, the proposed change does not involve a significant reduction in the margin of safety for the operation of each unit.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration. *Attorney for licensee:* Carey Fleming, Sr. Counsel—Nuclear Generation, Constellation Generation Group, LLC, 750 East Pratt Street, 17th floor, Baltimore, MD 21202; *NRC Branch Chief:* Nancy L. Salgado.

Dominion Nuclear Connecticut, Inc., Docket No. 50–336, Millstone Power Station, Unit No. 2, New London County, Connecticut.

Date of amendment request: September 21, 2011.

Description of amendment request: The proposed amendment would revise the Millstone Power Station, Unit No. 2 (MPS2) Technical Specification (TS) surveillance requirements for snubbers to conform to the revised MPS2 inservice inspection (ISI) program, move the specific surveillance requirements of TS 3/4.7.8, ''Snubbers,'' to the ''Snubber Examination, Testing, and Service Life Monitoring Program,'' add a reference to the program in the administrative controls section of the MPS2 TSs, and make administrative changes to TS 3/4.7.8.

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the *Code of Federal Regulations* (10 CFR) part 50, Section 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1

Will operation of the facility in accordance with the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes would revise SR [surveillance requirement] 4.7.8 to conform the TSs to the revised ISI program for snubbers. Snubber examination, testing and service life monitoring will continue to meet the requirements of 10 CFR 50.55a(g) except where the NRC [Nuclear Regulatory Commission] has granted specific written relief, pursuant to 10 CFR 50.55a(g)(6)(i), or authorized alternatives pursuant to 10 CFR 50.55a(a)(3).

Snubber examination, testing and service life monitoring is not an initiator of any accident previously evaluated. Therefore, the probability of an accident previously evaluated is not significantly increased.

Snubbers will continue to be demonstrated OPERABLE by performance of a program for examination, testing and service life monitoring in compliance with 10 CFR 50.55a or authorized alternatives. The proposed change to TS ACTION 3.7.8 for inoperable snubbers is administrative in nature and is required for consistency with the proposed change to SR 4.7.8. Therefore, the proposed change does not adversely affect plant operations, design functions or analyses that verify the capability of systems, structures, and components to perform their design functions. The consequences of accidents previously evaluated are not significantly increased.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2

Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed changes do not involve any physical alteration of plant equipment. The proposed changes do not change the method by which any safety-related system performs its function. As such, no new or different types of equipment will be installed, and the basic operation of installed equipment is unchanged. The methods governing plant operation and testing remain consistent with current safety analysis assumptions.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3

Will operation of the facility in accordance with this proposed change involve a significant reduction in the margin of safety?

Response: No.

The proposed changes ensure snubber examination, testing and service life monitoring will continue to meet the requirements of 10 CFR 50.55a(g) except where the NRC has granted specific written relief, pursuant to 10 CFR 50.55a(g)(6)(i), or authorized alternatives pursuant to 10 CFR 50.55a(a)(3). Snubbers will continue to be demonstrated OPERABLE by performance of a program for examination, testing and service life monitoring in compliance with 10 CFR 50.55a or authorized alternatives. The proposed change to TS ACTION 3.7.8 for inoperable snubbers is administrative in nature and is required for consistency with the proposed change to SR 4.7.8.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219; *NRC Branch Chief:* Harold K. Chernoff.

Indiana Michigan Power Company (the licensee), Docket No. 50–316, Donald C. Cook Nuclear Plant, Unit 2 (DCCNP–2), Berrien County, Michigan;

Date of amendment request: September 29, 2011.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.2.1, adding Optimized ZIRLO™ fuel rods to the fuel matrix in addition to Zircaloy or ZIRLO™ fuel rods that are currently in use. The proposed amendment would also add a Westinghouse topical report regarding Optimized ZIRLO™ as reference 8 in TS 5.6.5.b, which lists the analytical methods used to determine the core operating limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change would allow the use of Optimized ZIRLO™ clad nuclear fuel in the reactors. The NRC[-]approved topical report WCAP–12610–P–A and CENPD–404–P–A, Addendum 1–A ''Optimized ZIRLO™,'' prepared by Westinghouse Electric Company LLC (Westinghouse), addresses Optimized ZIRLO™ and demonstrates that Optimized ZIRLO™ has essentially the same properties as currently licensed ZIRLO™. The fuel cladding itself is not an accident initiator and does not affect accident probability. Use of Optimized ZIRLO™ fuel cladding has been shown to meet all 10 CFR 50.46 acceptance criteria and, therefore, will not increase the consequences of an accident.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Use of Optimized ZIRLO™ clad fuel will not result in changes in the operation or configuration of the facility. Topical Report WCAP–12610–P–A and CENPD–404–P–A demonstrated that the material properties of Optimized ZIRLO™ are similar to those of standard ZIRLO™. Therefore, Optimized ZIRLO™ fuel rod cladding will perform similarly to those fabricated from standard ZIRLO™, thus precluding the possibility of the fuel becoming an accident initiator and causing a new or different type of accident.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change will not involve a significant reduction in the margin of safety because it has been demonstrated that the material properties of the Optimized ZIRLO™ are not significantly different from those of standard ZIRLO™. Optimized ZIRLO™ is expected to perform similarly to standard ZIRLO™ for all normal operating and accident scenarios, including both loss of coolant accident (LOCA) and non-LOCA scenarios. For LOCA scenarios, where the slight difference in Optimized ZIRLO™ material properties relative to standard ZIRLO™ could have some impact on the overall accident scenario, plant-specific LOCA analyses using Optimized ZIRLO™ properties will be performed prior to the use of fuel assemblies with fuel rods containing Optimized ZIRLO™. These LOCA analyses will demonstrate that the acceptance criteria of 10 CFR 50.46 will be satisfied when Optimized ZIRLO™ fuel rod cladding is implemented.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James M. Petro, Jr., Senior Nuclear Counsel, Indiana Michigan Power Company, One Cook Place, Bridgman, MI 49106.

NRC Acting Branch Chief: Thomas J. Wengert.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety

Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through the Agencywide Documents Access and Management System (ADAMS) in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1-(800) 397–4209, (301) 415–4737 or by email to *pdr.resource@nrc.gov.*

Entergy Nuclear Vermont Yankee, LLC and Entergy Nuclear Operations, Inc., Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont;

Date of amendment request: December 21, 2010 as supplemented by letter dated May 16, 2011.

Description of amendment request: The amendment would revise Technical Specifications Section 3.6.A ''Pressure and Temperature Limitation'' to reflect the pressure and temperature limits for the reactor coolant system through, approximately the end of the prospective 20-year renewed license period, depending on the plant capacity factor.

Date of Issuance: November 4, 2011.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 250.

Facility Operating License No. DPR–28: Amendment revised the License and Technical Specifications.

Date of initial notice in ***Federal Register***: February 22, 2011 (76 FR 9823). The supplemental letter dated May 16, 2011, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commision's related evaluation of this amendment is contained in a Safety Evaluation dated dated November 4, 2011. No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas;

Date of amendment request: April 29, 2011.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.4.15, ''RCS [Reactor Coolant System] Leakage Detection Instrumentation,'' to define a new time limit for restoring inoperable RCS leakage detection instrumentation to operable status; establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable; and make TS Bases changes which reflect the proposed changes and more accurately reflect the contents of the facility design basis related to operability of the RCS leakage detection instrumentation. The changes are consistent with NRC-approved Revision 3 to Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler TSTF–513, ''Revise PWR Operability Requirements and Actions for RCS Leakage Instrumentation.''

Date of issuance: November 16, 2011.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 246.

Renewed Facility Operating License No. DPR–51: Amendment revised the Technical Specifications/license.

Date of initial notice in ***Federal Register***: September 6, 2011 (76 FR 55128).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 16, 2011. No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan;

Date of application for amendment: May 3, 2011.

Brief description of amendment: The amendment revises Technical Specifications Section 3.4.15 regarding reactor coolant leakage detection instrumentation to be consistent with Revision 3 of Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–513, ''Revise PWR [Pressurized Water Reactor] Operability Requirements and Actions for RCS [Reactor Coolant System] Leakage Instrumentation.''

Date of issuance: November 1, 2011.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 317 (for Unit 1) and 300 (for Unit 2).

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Renewed Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: June 14, 2011 (76 FR 34768).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 2011.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan;

Date of application for amendment: March 18, 2011.

Brief description of amendment: The amendment revises the Technical Specifications (TS) in accordance with the previously approved Technical Specification Task Force (TSTF) Change Traveler TSTF–491. Specifically the amendment changes Surveillance Requirements 3.7.2.1, 3.7.3.1, and 3.7.3.2 by relocating the closure times for the Steam Generator Stop Valves, Main Feed Isolation Valves, and Main Feed Regulation Valves from the TS to the licensee-controlled TS Bases document.

Date of issuance: November 3, 2011.

Effective date: As of the date of issuance and shall be implemented within 120 days from the date of issuance.

Amendment Nos.: 318 (for Unit 1) and 301 (for Unit 2).

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Renewed Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: May 17, 2011 (76 FR 28474).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 2011.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia;

Date of application for amendments: March 14, 2011

Brief description of amendments: The amendments revised the Technical Specifications (TS) ''RHR and Coolant Circulation-Low Water Level,'' to allow one RHR loop to be operable for up to 2 hours for surveillance testing provided the other RHR loop is operable and in operation. This revision is consistent with the Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Traveler TSTF–361–A, Revision 2, ''Allow standby SDC [shutdown cooling]/RHR[residual heat removal]/DHR [decay heat removal] loop to inoperable to support testing.''

Date of issuance: November 9, 2011.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 163/145.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register***: May 17, 2011 (76 FR 28476).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 9, 2011.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia;

Date of application for amendments: April 29, 2011

Brief description of amendments: The amendments revised the Technical Specifications (TSs) ''RCS [reactor coolant system] Leakage Detection Instrumentation,'' to define a new time limit for restoring inoperable RCS leakage detection instrument to operable status and establish alternate methods of monitoring RCS leakage when one or more required monitors are inoperable. This revision is consistent with the Industry/Technical Specification Task Force (TSTF) standard technical specification traveler TSTF–513–A, ''Revise PWR [pressurized water reactor] Operability Requirements and Actions for RCS Leakage [Detection] Instrumentation.''

Date of issuance: November 10, 2011.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: 164/146.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the licenses and the technical specifications.

Date of initial notice in ***Federal Register***: June 14, 2011 (76 FR 34768).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 10, 2011.

No significant hazards consideration comments received: No.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 17th day of November 2011.

Michele G. Evans,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–30525 Filed 11–28–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–483; NRC–2011–0276]

Union Electric Company; Callaway Plant, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license amendment request, opportunity to comment, opportunity to request a hearing.

DATES: Comments must be filed by December 29, 2011. A request for a hearing must be filed January 30, 2012.

ADDRESSES: Please include Docket ID NRC–2011–0276 in the subject line of your comments. For additional instructions on submitting comments and instructions on accessing documents related to this action, see ''Submitting Comments and Accessing Information'' in the **SUPPLEMENTARY INFORMATION** section of this document. You may submit comments by any one of the following methods:

- *Federal Rulemaking Web Site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0276. Address questions about NRC dockets to Carol Gallagher, *telephone:* (301) 492–3668; *email: Carol.Gallagher@nrc.gov.*
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, *Mail Stop:* TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.
- *Fax comments to:* RADB at (301) 492–3446.

SUPPLEMENTARY INFORMATION:

Submitting Comments and Accessing Information

Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

You can access publicly available documents related to this document using the following methods:

- *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* The application for amendment, dated December 10, 2010, as supplemented by letters dated June 16, 2011, and October 27, 2011, are available electronically under ADAMS Accession Nos. ML103470204, ML111680233 and ML113010383, respectively.
- *Federal Rulemaking Web Site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0276.

FOR FURTHER INFORMATION CONTACT: Mohan C. Thadani, Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone:* (301) 415–1476; *fax number:* (301) 415–2102 *email: mohan.thadani@nrc.gov.*

The U.S. Nuclear Regulatory Commission (NRC or the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–30 issued to Union Electric Company (the licensee) for operation of the Callaway Plant, Unit 1, located in Callaway County, Missouri.

The license amendment request was originally noticed in the **Federal Register** on March 8, 2011 (76 FR 12766). This notice is being reissued in its entirety to include a revised description of the amendment request. The proposed amendment would add a new Surveillance Requirement (SR)

3.3.8.6 to Technical Specification (TS) 3.3.8, ''Emergency Exhaust System (EES) Actuation Instrumentation.'' The new SR would require the performance of response time testing on the portion of the EES required to isolate the normal fuel building ventilation exhaust flow path and initiate the fuel building ventilation isolation signal (FBVIS) mode of operation. The proposed amendment also would revise TS Table 3.3.8–1 to indicate that new SR 3.3.8.6 applies to automatic actuation Function 2, ''Automatic Actuation Logic and Actuation Relays (BOP ESFAS),'' and Function 3, ''Fuel Building Exhaust Radiation—Gaseous.'' In addition, the specified frequency of new SR 3.3.8.6 would be relocated and controlled in accordance with the licensee's Surveillance Frequency Control Program in accordance with guidance in Nuclear Energy Institute (NEI) 04–10, ''Risk-Informed Technical Specifications Initiative 5b, Risk-Informed Method for Control of Surveillance Frequencies.'' Finally, there would be corresponding changes to the Final Safety Analysis Report (FSAR).

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which the Commission issued in the **Federal Register** on March 8, 2011 (76 FR 12766). The Commission is issuing a modified no significant hazards consideration to consider aspects of the SR 3.3.8.6 relocation to the Surveillance Frequency Control Program. The NRC previously approved the relocation of surveillance frequencies as part of Callaway Plant's License Amendment No. 202, as noted in the **Federal Register** on January 11, 2011 (76 FR 1649).

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

There are no design changes associated with the proposed change. All design, material, and construction standards that were applicable prior to this amendment request will continue to be applicable.

The proposed change will not affect accident initiators or precursors nor adversely alter the design assumptions, conditions, and configuration of the facility or the manner in which the plant is operated and maintained with respect to such initiators or precursors. There will be no change to fuel handling methods and procedures.

Therefore, there will be no changes that would serve to increase the likelihood of occurrence of a fuel handling accident.

The proposed change changes a performance requirement, but it does not physically alter safety-related systems nor affect the way in which safety-related systems perform their functions.

The proposed TS change will serve to assure that the fuel building ventilation exhaust ESF [emergency safety feature] response time is tested and confirmed to be in accordance with the system design and consistent with the assumptions of the fuel building FHA [fuel handling accident] analysis (as revised). As such, the proposed change will not alter or prevent the capability of structures, systems, and components (SSCs) to perform their intended functions for mitigating the consequences of an accident and meeting applicable acceptance limits.

The proposed change will not affect the source term used in evaluating the radiological consequences of a fuel handling accident in the fuel building. However, the Fuel Building Ventilation Exhaust ESF response time has been increased to 90 seconds in recognition of the total delay times involved in the generation of a fuel building ventilation isolation signal (FBVIS) and the times required for actuated components to change state to their required safety configurations. Consequently, the fuel handling accident radiological consequences as reported in FSAR [Final Safety Analysis Report] Table 15.7–8 have increased. However, the increases are much less than the upper limit of ''minimal'' as defined pursuant to 10 CFR 50.59(c)(2)(iii) and NEI [Nuclear Energy Institute] 96–07 Revision 1 [''Guidelines for 10 CFR 50.59 Implementation,'' November 2000]. Therefore, there is no significant increase in the calculated consequences of a postulated design basis fuel handling accident in the fuel building. The applicable radiological dose criteria of 10 CFR 100.11, 10 CFR 50 Appendix A General Design Criterion 19, and SRP [NUREG–0800, ''Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants: LWR [Light-Water-Reactor] Edition''] 15.7.4 will continue to be met. New SR 3.3.8.6 is added to ensure system performance consistent with the accident analyses and associated dose calculations (as revised).

[The licensee's request in its letter dated October 27, 2011, for relocating the specified frequency of new SR 3.3.8.6 to the licensee-controlled Surveillance Frequency Control Program is the type of SR whose relocation to the licensee's Surveillance Frequency Control Program was previously approved in Amendment No. 202, dated July 29, 2011 (ADAMS Accession No. ML111661877). That amendment was approved based on the conclusion that the change did not involve a significant increase in the probability or consequences of accidents previously evaluated.]

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

With respect to any new or different kind of accident, there are no proposed design changes nor are there any changes in the method by which any safety-related plant SSC performs its specified safety function. The proposed change will not affect the normal method of plant operation or change any operating parameters. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of this amendment.

The proposed amendment will not alter the design or performance of the 7300 Process Protection System, Nuclear Instrumentation System, Solid State Protection System, BOP ESFAS, MSFIS [Main Steam and Feed Isolation System], or LSELS [Load Shedding and Emergency Load Sequencing] used in the plant protection systems.

[The licensee's request in its letter dated October 27, 2011, for relocating the specified frequency of new SR 3.3.8.6 to the licensee-controlled Surveillance Frequency Control Program is the type of SR whose relocation to the licensee's Surveillance Frequency Control Program was previously approved in Amendment No. 202, dated July 29, 2011 (ADAMS Accession No. ML111661877). That amendment was approved based on the determination that the change does not involve a possibility of creating a new or different kind of accident].

The proposed change does not, therefore, create the possibility of a new or different accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

There will be no effect on those plant systems necessary to assure the accomplishment of protection functions associated with reactor operation or the reactor coolant system. There will be no impact on the overpower limit, departure from nucleate boiling ratio (DNBR) limits, heat flux hot channel factor (F_Q), nuclear enthalpy rise hot channel factor ($F\Delta H$), loss of coolant accident peak cladding temperature (LOCA PCT), peak local power density, or any other limit and associated margin of safety. Required shutdown margins in the COLR [Core Operating Limits Report] will not be changed.

The proposed change does not eliminate any surveillances or alter the frequency of surveillances required by the Technical Specifications. The proposed change would add a new Technical Specification Surveillance Requirement for assuring the satisfactory performance of the fuel building ventilation exhaust ESF function in response to a[n] FBVIS. The accident analysis for a fuel handling accident in the fuel building was re-performed to support the proposed Fuel Building Ventilation Exhaust ESF response time, and this reanalysis demonstrated that the acceptance criteria continue to be met with only a slight increase in radiological consequences (i.e., less than one percent).

[The licensee's request in its letter dated October 27, 2011, for relocating the specified frequency of new SR 3.3.8.6 to the licensee-controlled Surveillance Frequency Control Program is the type of SR whose relocation to the licensee's Surveillance Frequency Control Program was previously approved in Amendment No. 202, dated July 29, 2011 (ADAMS Accession No. ML111661877). That amendment was approved based on the determination that the proposed change would not result in a significant reduction of margin of safety.]

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. NRC regulations are accessible electronically from the NRC Library on the NRC Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the requestor/petitioner seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the requestor/petitioner shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The requestor/petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A requestor/petitioner who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule (72 FR 49139, August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.* System requirements for accessing the E-Submittal server are detailed in NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through EIE, users will be required to install a Web browser plug-in from the NRC Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the agency's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email at *MSHD.Resource@nrc.gov,* or by a toll-free call at (866) 672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/EHD/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Non-timely filings will not be entertained absent a determination by the presiding officer that the petition or request should be granted or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

For further details with respect to this license amendment application, see the application for amendment dated December 10, 2010, as supplemented by letters dated June 16, 2011, and October 27, 2011, which is available for public inspection at the Commission's PDR, located at One White Flint North, File Public Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available documents created or received at the NRC are accessible electronically through ADAMS in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*

Attorney for licensee: John O'Neill, Esq., Pillsbury Winthrop Shaw Pittman LLP, 2300 N Street NW., Washington, DC 20037.

Dated at Rockville, Maryland, this 22nd day of November 2011.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Senior Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–30728 Filed 11–28–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0006]

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of November 28, December 5, 12, 19, 26, 2011, January 2, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of November 28, 2011

Tuesday, November 29, 2011

9:25 a.m. Affirmation Session (Public Meeting) (Tentative)

a. U.S. Department of Energy (High-Level Waste Repository), Docket No. 63–001–HLW; Staff Petition for the Commission to Exercise its Inherent Supervisory Authority to Review Board Orders Regarding Preservation of Licensing Support Network (LSN) Documents Collection, and Staff Request for Stay (Tentative)

b. Final Rule: Requirements for Fingerprint—Based Criminal History Records Checks for Individuals Seeking Unescorted Access to Nonpower Reactors (Research or Test Reactors) (RIN 3150–A125) (Tentative)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

9:30 a.m. Meeting with the Advisory Committee on Reactor Safeguards (ACRS) (Public Meeting) (*Contact:* Tanny Santos, (301) 415–7270)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Thursday, December 1, 2011

9:30 a.m. Briefing on Equal Employment Opportunity (EEO) and Small Business Programs (Public Meeting) (*Contact:* Barbara Williams, (301) 415–7388)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of December 5, 2011—Tentative

There are no meetings scheduled for the week of December 5, 2011.

Week of December 12, 2011—Tentative

Tuesday, December 13, 2011

9 a.m. Briefing on NFPA 805 Fire Protection (Public Meeting)(Contact: Alex Klein, (301) 415–2822)

This meeting will be webcast live at the Web address—*http://www.nrc.gov*.

Week of December 19, 2011—Tentative

There are no meetings scheduled for the week of December 19, 2011.

Week of December 26, 2011—Tentative

There are no meetings scheduled for the week of December 26, 2011.

Week of January 2, 2012—Tentative

There are no meetings scheduled for the week of January 2, 2012.

* * * * *

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. *Contact person for more information:* Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html*.

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at (301) 415–6200, TDD: (301) 415–2100, or by email at *william.dosch@nrc.gov*. Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969), or send an email to *darlene.wright@nrc.gov*.

Dated: November 23, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–30839 Filed 11–25–11; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0277]

Notice of Opportunity for Public Comment on the Proposed Model Safety Evaluation for Plant-Specific Adoption of Technical Specifications Task Force Traveler TSTF–505, Revision 1, ''Provide Risk-Informed Extended Completion Times—RITSTF Initiative 4B''

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is requesting public comment on the proposed model safety evaluation (SE) for plant-specific adoption of Technical Specifications (TS) Task Force (TSTF) Traveler TSTF–505, Revision 1, ''Provide Risk-Informed Extended Completion Times—RITSTF Initiative 4B.'' TSTF–505, Revision 1, is available in the Agencywide Documents Access and Management System (ADAMS) under Accession Number ML111650552; the model application is available in ADAMS under Accession Number ML112850506. The proposed model SE for plant-specific adoption of TSTF–505, Revision 1, is available electronically under ADAMS Accession Number ML112690239.

The proposed amendment would modify the TS requirements related to Completion Times (CTs) for Required Actions to provide the option to calculate a longer, risk-informed CT. A new program, the Risk-Informed Completion Time (RICT) Program, is added to TS Section 5, Administrative Controls. The proposed change revises the Improved Standard Technical Specification (ISTS), NUREGs–1430, –1431, –1432, –1433, and –1434.

DATES: The comment period expires on December 30, 2011. Comments received after this date will be considered, if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comments by any one of the following methods. Please include Docket ID NRC–2011–0277 in the subject line of your comments. Comments submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site *http://www.regulations.gov.* Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including

any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating comments received from other persons for submission to the NRC inform those persons that the NRC will not edit their comments to remove any identifying or contact information, and therefore, they should not include any information in their comments that they do not want publicly disclosed.

• *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for documents filed under Docket ID NRC–2011–0277. Address questions about NRC dockets to Carol Gallagher (301) 492–3668; email *carol.gallagher@nrc.gov.*

• *Mail comments to:* Cindy K. Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Division of Administrative Services, Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to RADB at (301) 492–3446.

You can access publicly available documents related to this notice using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Room O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1–(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.*

• *Federal rulemaking Web site:* Public comments and supporting materials related to this notice can be found at *http://www.regulations.gov* by searching on Docket ID: NRC–2011–0277.

FOR FURTHER INFORMATION CONTACT: Ms. Michelle C. Honcharik, Senior Project Manager, Licensing Processes Branch, Mail Stop: O–12 D1, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone (301) 415–1774 or email at *michelle.honcharik@nrc.gov* or Ms. Kristy Bucholtz, Technical Specifications Branch, Mail Stop: O–7 C2A, Division of Safety Systems, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC, 20555–0001; telephone (301) 415–1295 or email; *kristy.bucholtz@nrc.gov.*

SUPPLEMENTARY INFORMATION: TSTF–505, Revision 1, is applicable to all nuclear powered reactors. TSTF–505 revises the TS to (1) Add a new RICT program to the Administrative Controls of TS, (2) modify selected Required Actions to permit extending the CTs, provided risk is assessed and managed within an acceptable configuration risk management program (CRMP), (3) add new Conditions, Required Actions, and CTs to address conditions not currently addressed in TS, and (4) add a new example in TS Section 1.3, to describe application of the RICT Program. The model SE will facilitate expedited approval of plant-specific adoption of TSTF–505, Revision 1.

This notice provides an opportunity for the public to comment on proposed changes to the ISTS after a preliminary assessment and finding by the NRC staff that the agency will likely offer the changes for adoption by licensees. This notice solicits comment on proposed changes to the ISTS, which if implemented by a licensee will modify the plant-specific TS. The NRC staff will evaluate any comments received and reconsider the changes or announce the availability of the changes for adoption by licensees. Licensees opting to apply for this TS change are responsible for reviewing the NRC staff's SE., and the applicable technical justifications, providing any necessary plant-specific information, and assessing the completeness and accuracy of their license amendment request (LAR). The NRC will process each amendment application responding to the notice of availability according to applicable NRC rules and procedures.

The proposed changes do not prevent licensees from requesting an alternate approach or proposing changes other than those proposed in TSTF–505, Revision 1. However, significant deviations from the approach recommended in this notice or the inclusion of additional changes to the license require additional NRC staff review. This may increase the time and resources needed for the review or result in NRC staff rejection of the LAR. Licensees desiring significant deviations or additional changes should instead submit an LAR that does not claim to adopt TSTF–505, Revision 1.

Dated at Rockville, Maryland, this 6th day of November 2011.

For the Nuclear Regulatory Commission.

John R. Jolicoeur,

Chief, Licensing Processes Branch, Division of Policy and Rulemaking, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–30714 Filed 11–28–11; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0270]

Solicitation of Feedback on the Effectiveness of the Reactor Oversight Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Request for public participation in survey.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC or the Commission) is soliciting survey input from members of the public, licensees, and interest groups related to the effectiveness of the Reactor Oversight Process (ROP). This solicitation will provide insights into the self-assessment process, and a summary of the survey results will be included in the annual ROP self-assessment report to the Commission.

DATES: Complete and submit survey forms by January 13, 2012. The NRC will consider survey forms received after this date if it is practical to do so, but is able to ensure consideration of only survey forms received on or before this date.

ADDRESSES: The electronic, fillable version of the survey questions may be obtained at *http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/2011ROP survey.pdf.* For additional instructions on submitting surveys and instructions on accessing documents related to this action, see Section I, ''Submitting Surveys and Accessing Information,'' of the **SUPPLEMENTARY INFORMATION** section of this document. If you cannot access the electronic, fillable version of the survey, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document to receive a copy of the survey.

You may submit survey forms by any one of the following methods (there is no need to submit via more than one method):

• *Email the fillable survey forms:* After completing the electronic, fillable version of the survey obtained from the Web site previously provided, select the

''Submit Survey'' button on the survey form.

• *Email scanned survey forms to: ROPSurvey@nrc.gov.*

• *Mail survey forms to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: TWB–05–B01M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Please include the Docket ID NRC–2011–0270 in the subject line of your submission.

FOR FURTHER INFORMATION CONTACT: Ms. Jocelyn Lian, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001; *telephone:* (301) 415–4666, *email: Jocelyn.Lian@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Submitting Surveys and Accessing Information

Surveys submitted in writing or in electronic form will be posted on the NRC Web site and on the Federal rulemaking Web site, *http://www.regulations.gov.* Because your submission will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

The NRC requests that any party soliciting or aggregating information received from other persons for submission to the NRC inform those persons that the NRC will not edit their submission to remove any identifying or contact information; therefore, they should not include any information in their submission that they do not want publicly disclosed.

You can access publicly available documents related to this action using the following methods:

• *NRC's Public Document Room (PDR):* The public may examine and have copied, for a fee, publicly available documents at the NRC's PDR, O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

• *NRC's Agencywide Documents Access and Management System (ADAMS):* Publicly available documents created or received at the NRC are available online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* From this page, the public can gain entry into ADAMS, which provides text and image files of the NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-(800) 397–4209, (301) 415–4737, or by email to *pdr.resource@nrc.gov.* The **Federal Register** notice Soliciting Feedback on the Implementation of the Reactor Oversight Process is available electronically under ADAMS Accession Number ML112030166.

• *Federal Rulemaking Web Site:* Public survey submissions and supporting materials related to this action can be found at *http://www.regulations.gov* by searching on Docket ID NRC–2011–0270.

Information regarding the ROP and licensee performance can be found at *http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/index.html.* In addition, the Commission paper may be accessed at this link when completed.

II. Program Overview

The mission of the NRC is to license and regulate the Nation's civilian use of byproduct, source, and special nuclear materials to ensure adequate protection of public health and safety, promote the common defense and security, and protect the environment. This mission is accomplished through the following activities:

1. The NRC issues licenses for the possession, use, and disposal of nuclear materials;

2. The NRC develops and implements requirements governing licensed activities; and

3. The NRC inspects licensee activities to ensure compliance with regulatory requirements and the law.

Although the NRC's responsibility is to monitor and regulate licensees' performance, the primary responsibility for safe operation and handling of nuclear materials rests with each licensee.

As the nuclear industry in the United States has matured, the NRC and its licensees have learned much about how to safely operate nuclear facilities and handle nuclear materials. In April 2000, the NRC began to implement more effective and efficient inspection, assessment, and enforcement approaches, which apply insights from these years of regulatory oversight and nuclear facility operation. Key elements of the ROP include NRC inspection procedures, plant performance indicators, a significance determination process, and an assessment program that incorporates various risk-informed thresholds to help determine the level of NRC oversight. Since ROP development, the NRC has frequently communicated with the public by various initiatives: conducting public meetings in the vicinity of each licensed commercial nuclear power plant, issuing **Federal Register** notices to solicit feedback on the ROP, publishing press releases about the process, conducting multiple public workshops, placing pertinent background information in the NRC's PDR, and maintaining an NRC Web site containing easily accessible information about the ROP and licensee performance.

III. NRC Public Stakeholder Comments

The NRC is seeking feedback from members of the public, various public stakeholders, and industry groups on their insights regarding the effectiveness of the ROP in Calendar Year (CY) 2011. Responses received will provide important information for ongoing program improvement. A summary of the survey results obtained will be provided to the Commission and included in the annual ROP self-assessment report. The past reports can be found at *http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/program-evaluations.html#section3.*

This solicitation of public comments has been issued each year since ROP implementation in 2000. Currently, the external survey frequency is biennial.

IV. Survey

An electronic, fillable version of the survey questions may be obtained at *http://www.nrc.gov/NRR/OVERSIGHT/ASSESS/2011ROPsurvey.pdf.* If you have problems accessing the electronic, fillable version of the survey, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document to receive a copy of this survey. You may submit the survey to the NRC by any one of the methods listed in the **ADDRESSES** section of this document. The NRC does not plan to provide specific responses to the submissions received during this solicitation. The survey submissions will provide insights into the self-assessment process and a summary of the survey results will be included in the annual ROP self-assessment report to the Commission.

V. Paperwork Reduction Act

This survey contains information collections that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These information collections were approved by the Office of Management and Budget (OMB), Approval Number 3150–0197, which expires August 31, 2012.

The burden to the public for these voluntary information collections is estimated to be 45 minutes per response. The information gathered will be used in the NRC's self-assessment of the reactor oversight process. Send comments regarding this burden estimate to the Information Services

Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to *INFOCOLLECTS.RESOURCE@NRC.GOV;* and to the Desk Officer, Chad Whiteman, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0197), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

Dated at Rockville, Maryland, this 18th day of November, 2011.

For the U.S. Nuclear Regulatory Commission.

John Lubinski,

Deputy Director, Division of Inspection & Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. 2011–30716 Filed 11–28–11; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

[OMB–3420–00018; OPIC–129]

Submission for OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency has prepared an information collection for OMB review and approval and has requested public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received within 60 calendar-days of publication of this Notice.

ADDRESSES: Copies of the subject form may be obtained from the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie Bryant, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: Revised form.
Title: Sponsor Disclosure Report.
Form Number: OPIC–129.
Frequency of Use: Once per investor per project.
Type of Respondents: Business or other institution (except farms); not-for-profit institutions.
Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies or citizens investing overseas.
Reporting Hours: 2100 hours (3 hours per response).
Number of Responses: 700 per year.
Federal Cost: $70,574.
Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The information provided in the OPIC–129 is used by OPIC as a part of the Character Risk Due Diligence/background check procedure (similar to a commercial bank's Know Your Customer procedure) that it performs on each party that has a significant relationship (5% or more beneficial ownership, provision of significant credit support, significant managerial relationship) to the projects that OPIC finances.

Dated: November 21, 2011.

Nichole Cadiente,

Administrative Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 2011–30441 Filed 11–28–11; 8:45 am]

BILLING CODE M

OVERSEAS PRIVATE INVESTMENT CORPORATION

[OMB–3420–0001; OPIC–50]

Submission for OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency has prepared an information collection for OMB review and approval and has requested public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received within 60 calendar-days of publication of this Notice.

ADDRESSES: Copies of the subject form may be obtained from the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie Bryant, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: Revised form.
Title: Request for Registration for Political Risk Insurance.
Form Number: OPIC–50.
Frequency of Use: Once per investor per project.
Type of Respondents: Business or other institution (except farms); individuals.
Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies or citizens investing overseas.
Reporting Hours: 125 hours (30 minutes per response).
Number of Responses: 250 per year.
Federal Cost: $6,301.25
Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and the project's eligibility for political risk insurance and collect information for underwriting analysis.

Dated: November 21, 2011.

Nichole Cadiente,

Administrative Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 2011–30445 Filed 11–28–11; 8:45 am]

BILLING CODE M

OVERSEAS PRIVATE INVESTMENT CORPORATION

[OMB–3420–00015; OPIC–52]

Submission for OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency has prepared an information collection for OMB review and approval and has requested public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received within 60 calendar-days of publication of this Notice.

ADDRESSES: Copies of the subject form may be obtained from the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie Bryant, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: Revised form.
Title: Application for Political Risk Insurance.
Form Number: OPIC–52.
Frequency of Use: Once per investor per project.
Type of Respondents: Business or other institution (except farms); individuals.
Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies or citizens investing overseas.
Reporting Hours: 150 hours (2 hours per response).
Number of Responses: 75 per year.
Federal Cost: $11,342
Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and the project's eligibility for political risk insurance and collect information for underwriting analysis.

Dated: November 21, 2011.

Nichole Cadiente,

Administrative Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 2011–30444 Filed 11–28–11; 8:45 am]

BILLING CODE M

OVERSEAS PRIVATE INVESTMENT CORPORATION

[OPIC Form 162; OMB–3420–0019]

Submission for OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency has prepared an information collection for OMB review and approval and has requested public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received within 60 calendar-days of publication of this Notice.

ADDRESSES: Copies of the subject form may be obtained from the Agency submitting officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie Bryant, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: Revised form.
Title: Self-Monitoring Questionnaire.
Form Number: OPIC 162 OMB–3420–0019.
Frequency of Use: One per investor per project per year.
Type of Respondents: Business or other institution (except farms); individuals.
Standard Industrial Classification Codes: All.
Description of Affected Public: U.S. companies or citizens investing overseas.
Reporting Hours: 1,800 (4 hours per form).
Number of Responses: 450 per year.
Federal Cost: $45,369.
Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.
Abstract (Needs and Uses): The Self Monitoring Questionnaire is the principal document used by OPIC to monitor the developmental effects of OPIC's investment projects, monitor the economic effects on the U.S. economy, and collect information on compliance with environmental and labor policies.

Dated: November 21, 2011.

Nichole Cadiente,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2011–30446 Filed 11–28–11; 8:45 am]

BILLING CODE M

OVERSEAS PRIVATE INVESTMENT CORPORATION

[OMB–3420–00015; OPIC–115]

Submission for OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency has prepared an information collection for OMB review and approval and has requested public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of the Agency's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received within 60 calendar-days of publication of this Notice.

ADDRESSES: Copies of the subject form may be obtained from the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: Essie Bryant, Record Manager, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527; (202) 336–8563.

Summary Form Under Review

Type of Request: Revised form.
Title: Application for Project Finance.
Form Number: OPIC–115.
Frequency of Use: Once per investor per project.
Type of Respondents: Business or other institution (except farms); individuals.
Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 187.5 hours (0.75 hours per response).

Number of Responses: 250 per year.

Federal Cost: $12,602.50.

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The application is the principal document used by OPIC to determine the investor's and the project's eligibility for project financing and collect information for financial underwriting analysis.

Dated: November 21, 2011.

Nichole Cadiente,

Administrative Counsel, Administrative Affairs, Department of Legal Affairs.

[FR Doc. 2011–30443 Filed 11–28–11; 8:45 am]

BILLING CODE M

POSTAL REGULATORY COMMISSION

[Docket No. A2012–54; Order No. 988]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the consolidation of the Slayden, Tennessee post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: November 21, 2011: Administrative record due (from Postal Service); December 19, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on November 4, 2011, the Commission received a petition for review of the Postal Service's determination to consolidate the Slayden post office in Slayden, Tennessee. The petition for review was filed by Roger Harrison, Mayor, and Town of Slayden (Petitioners) and is postmarked October 20, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–54 to consider Petitioners' appeal. If Petitioners would like to further explain their position with supplemental information or facts, Petitioners may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 9, 2011.

Categories of issues apparently raised. Petitioners contend that (1) the Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record is within 15 days after the date in which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date in which the petition for review was filed with the Commission.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before December 19, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The procedural schedule listed below is adopted.

2. Pursuant to 39 U.S.C. 505, Manon Boudreault is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

November 4, 2011	Filing of Appeal.
November 21, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
November 21, 2011	Deadline for the Postal Service to file any responsive pleading.
December 19, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
December 9, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 29, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
January 13, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 20, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
February 17, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–30638 Filed 11–28–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–55; Order No. 989]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Nemaha, Nebraska post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: November 21, 2011: Administrative record due (from Postal Service); December 19, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on November 4, 2011, the Commission received a petition for review of the Postal Service's determination to close the Nemaha post office in Nemaha, Nebraska. The petition for review was filed by Rich Henry (Petitioner) and is postmarked October 25, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–55 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 9, 2011.

Categories of issues apparently raised. Petitioner contends that (1) the Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record is within 15 days after the date in which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date in which the petition for review was filed with the Commission.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in

this case are to be filed on or before December 19, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Cassandra L. Hicks is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

November 4, 2011	Filing of Appeal.
November 21, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
November 21, 2011	Deadline for the Postal Service to file any responsive pleading.
December 19, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
December 9, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 29, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
January 13, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 20, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
February 22, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–30639 Filed 11–28–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–57; Order No. 991]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Port Kent, New York post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: November 21, 2011: Administrative record due (from Postal Service); December 19, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on November 4, 2011, the Commission received a petition for review of the Postal Service's determination to close the Port Kent post office in Port Kent, New York. The petition for review was filed by Elaine Smith (Petitioner) and is postmarked October 25, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–57 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 9, 2011.

Categories of issues apparently raised. Petitioner contends that (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record is within 15 days after the date in which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date in which the petition for review was filed with the Commission.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section.

Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before December 19, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Malin Moench is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

November 4, 2011	Filing of Appeal.
November 21, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
November 21, 2011	Deadline for the Postal Service to file any responsive pleading.
December 19, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
December 9, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 29, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
January 13, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 20, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
February 22, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–30648 Filed 11–28–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–58; Order No. 992]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Deering, Missouri post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: November 22, 2011: Administrative record due (from Postal Service); December 19, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on November 7, 2011, the Commission received a petition for review of the Postal Service's determination to close the Deering post office in Deering, Missouri. The petition for review was filed by Douglas James (Petitioner) and is postmarked October 28, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–58 to consider Petitioner's appeal. If Petitioner would like to further explain his position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 12, 2011.

Categories of issues apparently raised. Petitioner contends that (1) The Postal Service failed to consider the effect of the closing on the community (*see* 39 U.S.C. 404(d)(2)(A)(i)); (2) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); and (3) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission

may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record with the Commission is November 22, 2011. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is November 22, 2011.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before December 19, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The Postal Service shall file the applicable administrative record regarding this appeal no later than November 22, 2011.

2. Any responsive pleading by the Postal Service to this notice is due no later than November 22, 2011.

3. The procedural schedule listed below is hereby adopted.

4. Pursuant to 39 U.S.C. 505, Kenneth E. Richardson is designated officer of the Commission (Public Representative) to represent the interests of the general public.

5. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register.**

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

November 7, 2011	Filing of Appeal.
November 22, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
November 22, 2011	Deadline for the Postal Service to file any responsive pleading.
December 19, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
December 12, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
January 3, 2012	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
January 18, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 25, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
February 25, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–30652 Filed 11–28–11; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. A2012–56; Order No. 990]

Post Office Closing

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: This document informs the public that an appeal of the closing of the Rippey, Iowa post office has been filed. It identifies preliminary steps and provides a procedural schedule. Publication of this document will allow the Postal Service, petitioners, and others to take appropriate action.

DATES: November 21, 2011: Administrative record due (from Postal Service); December 19, 2011, 4:30 p.m., Eastern Time: Deadline for notices to intervene. *See* the Procedural Schedule in the **SUPPLEMENTARY INFORMATION** section for other dates of interest.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION: Notice is hereby given that, pursuant to 39 U.S.C. 404(d), on November 4, 2011, the

Commission received a petition for review of the Postal Service's determination to close the Rippey post office in Rippey, Iowa. The petition for review was filed by Mary Weaver (Petitioner) and is postmarked October 25, 2011. The Commission hereby institutes a proceeding under 39 U.S.C. 404(d)(5) and establishes Docket No. A2012–56 to consider Petitioner's appeal. If Petitioner would like to further explain her position with supplemental information or facts, Petitioner may either file a Participant Statement on PRC Form 61 or file a brief with the Commission no later than December 9, 2011.

Categories of issues apparently raised. Petitioner contends that (1) the Postal Service failed to consider whether or not it will continue to provide a maximum degree of effective and regular postal services to the community (*see* 39 U.S.C. 404(d)(2)(A)(iii)); (2) the Postal Service failed to adequately consider the economic savings resulting from the closure (*see* 39 U.S.C. 404(d)(2)(A)(iv)); (3) the Postal Service failed to follow procedures required by law regarding closures (*see* 39 U.S.C. 404(d)(5)(B)); and (4) there are factual errors contained in the Final Determination.

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above, or that the Postal Service's determination disposes of one or more of those issues. The deadline for the Postal Service to file the applicable administrative record is within 15 days after the date in which the petition for review was filed with the Commission. *See* 39 CFR 3001.113. In addition, the due date for any responsive pleading by the Postal Service is also within 15 days after the date in which the petition for review was filed with the Commission.

Availability; Web site posting. The Commission has posted the appeal and supporting material on its Web site at *http://www.prc.gov.* Additional filings in this case and participant's submissions also will be posted on the Web site, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's Web site is available online or by contacting the Commission's webmaster via telephone at (202) 789–6873 or via electronic mail at *prc-webmaster@prc.gov.*

The appeal and all related documents are also available for public inspection in the Commission's docket section. Docket section hours are 8 a.m. to 4:30 p.m., Eastern Time, Monday through Friday, except on Federal government holidays. Docket section personnel may be contacted via electronic mail at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Filing of documents. All filings of documents in this case shall be made using the Internet (Filing Online) pursuant to Commission rules 9(a) and 10(a) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained. *See* 39 CFR 3001.9(a) and 3001.10(a). Instructions for obtaining an account to file documents online may be found on the Commission's Web site, *http://www.prc.gov,* or by contacting the Commission's docket section at *prc-dockets@prc.gov* or via telephone at (202) 789–6846.

Commission reserves the right to redact personal information which may infringe on an individual's privacy rights from documents filed in this proceeding.

Intervention. Persons, other than the Petitioners and respondents, wishing to be heard in this matter are directed to file a notice of intervention. *See* 39 CFR 3001.111(b). Notices of intervention in this case are to be filed on or before December 19, 2011. A notice of intervention shall be filed using the Internet (Filing Online) at the Commission's Web site, *http://www.prc.gov,* unless a waiver is obtained for hardcopy filing. *See* 39 CFR 3001.9(a) and 3001.10(a).

Further procedures. By statute, the Commission is required to issue its decision within 120 days from the date it receives the appeal. *See* 39 U.S.C. 404(d)(5). A procedural schedule has been developed to accommodate this statutory deadline. In the interest of expedition, in light of the 120-day decision schedule, the Commission may request the Postal Service or other participants to submit information or memoranda of law on any appropriate issue. As required by Commission rules, if any motions are filed, responses are due 7 days after any such motion is filed. *See* 39 CFR 3001.21.

It is ordered:

1. The procedural schedule listed below is hereby adopted.

2. Pursuant to 39 U.S.C. 505, Patricia A. Gallagher is designated officer of the Commission (Public Representative) to represent the interests of the general public.

3. The Secretary shall arrange for publication of this notice and order and Procedural Schedule in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

PROCEDURAL SCHEDULE

November 21, 2001	Filing of Appeal.
November 4, 2011	Deadline for the Postal Service to file the applicable administrative record in this appeal.
November 21, 2011	Deadline for the Postal Service to file any responsive pleading.
December 19, 2011	Deadline for notices to intervene (*see* 39 CFR 3001.111(b)).
December 9, 2011	Deadline for Petitioners' Form 61 or initial brief in support of petition (*see* 39 CFR 3001.115(a) and (b)).
December 29, 2011	Deadline for answering brief in support of the Postal Service (*see* 39 CFR 3001.115(c)).
January 13, 2012	Deadline for reply briefs in response to answering briefs (*see* 39 CFR 3001.115(d)).
January 20, 2012	Deadline for motions by any party requesting oral argument; the Commission will schedule oral argument only when it is a necessary addition to the written filings (*see* 39 CFR 3001.116).
February 22, 2012	Expiration of the Commission's 120-day decisional schedule (*see* 39 U.S.C. 404(d)(5)).

[FR Doc. 2011–30647 Filed 11–28–11; 8:45 am]
BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 29867; 812–13935]

Genesis Capital, LLC and Northern Lights Fund Trust; Notice of Application

November 21, 2011.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

SUMMARY OF APPLICATION: Applicants request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

APPLICANTS: Genesis Capital, LLC (''Genesis Capital'' or the ''Adviser'') and Northern Lights Fund Trust (the ''Trust'').

DATES: *Filing Dates:* The application was filed on August 3, 2011, and amended on November 14, 2011.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on December 16, 2011, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants: Genesis Capital, 7191 Wagner Way NW., Suite 302, Gig Harbor, WA 98335; Trust: 4020 South 147th Street, Omaha, NE 68137.

FOR FURTHER INFORMATION CONTACT: Steven I. Amchan, Senior Counsel, at (202) 551–6826, or Dalia Osman Blass, Assistant Director, at (202) 551–6821 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust, a Delaware statutory trust, is registered under the Act as an open-end management investment company and as of November 9, 2011 was comprised of 123 individual registered series, including the SCA Absolute Return Fund and the SCA Directional Fund (the ''Absolute Return Fund'' and ''Directional Fund,'' respectively, and together, the ''SCA Funds''), and 10 additional series that are in registration. The SCA Funds do not currently employ unaffiliated investment subadvisers (each, a ''Subadviser''), but anticipate doing so in the future.[1] Genesis Capital, a Washington limited liability company, is, and each other Adviser will be, registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). Genesis Capital serves as the investment adviser of the Absolute Return Fund and Directional Fund, and an Adviser will serve as investment adviser to each future Fund, pursuant to investment advisory agreements (''Advisory Agreements''). The SCA Funds' Advisory Agreements were approved by the Trust's board of trustees (together with the board of directors or trustees of any other Fund, the ''Board''), including a majority of the trustees who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Trust or the Adviser (''Independent Trustees'') and will be approved by the initial shareholder of the Absolute Return Fund and Directional Fund, respectively, upon commencement of each respective Fund's operations.

2. Under the terms of the SCA Funds' Advisory Agreements, the Adviser is responsible for the overall management of the Absolute Return Fund's and Directional Fund's business affairs and selecting investments according to their respective investment objectives, policies and restrictions. For the investment management services that it provides to those Funds, the Adviser receives the fee specified in the Advisory Agreements. The Advisory Agreements also permit the Adviser to retain one or more subadvisers for the purpose of managing the investments of all or a portion of the assets of the Absolute Return Fund and Directional Fund. Pursuant to this authority, the Adviser may enter into investment subadvisory agreements with Subadvisers to provide investment advisory services to the Absolute Return Fund and Directional Fund, respectively (such agreements with Subadvisers, ''Subadvisory Agreements''). Each Subadviser will be registered as an investment adviser under the Advisers Act. The Adviser will supervise, evaluate and allocate assets to the Subadvisers, and make recommendations to the Board about their hiring, retention or release, at all times subject to the authority of the Board. The Adviser will compensate each Subadviser out of the fees paid to the Adviser under the Advisory Agreement.

3. Applicants request an order to permit the Adviser, subject to Board approval, to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to any subadviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Trust, a Fund or the Adviser, other than by reason of serving as a subadviser to one or more of the Funds (''Affiliated Subadviser'').

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of securities in a series investment company affected by a

[1] Applicants also request relief with respect to any existing or future series of the Trust and any other existing or future registered open-end management investment company or series thereof that: (a) Is advised by the Adviser or any entity controlling, controlled by, or under common control with the Adviser or its successors (included within the term ''Adviser''); (b) uses the manager of managers structure (''Manager of Managers Structure'') described in the application; and (c) complies with the terms and conditions of the application (together with the SCA Funds, the ''Funds'' and each, individually, a ''Fund''). For the purposes of the requested order, ''successor'' is limited to those one or more entities that would result from a reorganization into another jurisdiction or a change in the type of business organization. All existing entities that currently intend to rely on the requested order are named as applicants, and the Absolute Return Fund and Directional Fund are the only series that currently intend to rely on the requested order. If the name of any Fund contains the name of a Subadviser, the name of the Adviser will precede the name of the Subadviser.

matter must approve that matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard.

3. Applicants assert that the shareholders expect the Adviser and the Board to select the Subadvisers for the Funds that are best suited to achieve each Fund's investment objective. Applicants assert that, from the perspective of the investor, the role of the Subadvisers is substantially equivalent to that of the individual portfolio managers employed by the Adviser. Applicants state that requiring shareholder approval of each Subadvisory Agreement would impose costs and unnecessary delays on the Funds, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreements and any Subadvisory Agreement with an Affiliated Subadviser will remain subject to section 15(a) of the Act and rule 18f–2 under the Act, including the requirement for shareholder voting.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the requested order, the operation of the Fund in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities, as defined in the Act, or in the case of a Fund whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before offering shares of that Fund to the public.

2. Each Fund relying on the requested order will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to this application. Each Fund will hold itself out to the public as utilizing the Manager of Managers Structure. The prospectus will prominently disclose that the Adviser has ultimate responsibility (subject to oversight by the Board) to oversee the Subadvisers and recommend their hiring, termination, and replacement.

3. Within 90 days of the hiring of a new Subadviser, shareholders of the affected Fund will be furnished all information about the new Subadviser that would be included in a proxy statement. To meet this obligation, each Fund will provide shareholders within 90 days of the hiring of a new Subadviser an information statement meeting the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Securities Exchange Act of 1934.

4. The Adviser will not enter into a subadvisory agreement with any Affiliated Subadviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Fund.

5. At all times, at least a majority of the Board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

6. Whenever a subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the applicable Board minutes, that such change is in the best interests of the Fund and its shareholders, and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's assets and, subject to review and approval of the Board, will: (a) Set each Fund's overall investment strategies; (b) evaluate, select and recommend Subadvisers to manage all or a part of each Fund's assets; (c) allocate and, when appropriate, reallocate each Fund's assets among one or more Subadvisers; (d) monitor and evaluate the performance of Subadvisers; and (e) implement procedures reasonably designed to ensure that the Subadvisers comply with each Fund's investment objective, policies and restrictions.

8. No trustee or officer of the Trust or a Fund, or director, manager, or officer of the Adviser, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Subadviser, except for (a) Ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of any publicly traded company that is either a Subadviser or an entity that controls, is controlled by, or is under common control with a Subadviser.

9. In the event the Commission adopts a rule under the Act providing substantially similar relief to that in the order requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–30632 Filed 11–28–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Thursday, December 1, 2011 at 2 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), 9(B) and (10) and 17 CFR 200.402(a)(3), (5), (7), 9(ii) and (10), permit consideration of the scheduled matters at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the items listed for the Closed Meeting in a closed session.

The subject matter of the Closed Meeting scheduled for Thursday, December 1, 2011 will be: institution and settlement of injunctive actions; institution and settlement of administrative proceedings; adjudicatory matters; and other matters relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: November 23, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–30794 Filed 11–25–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold a Closed Meeting on Tuesday, November 29, 2011 at 5 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meeting. Certain staff members who have an interest in the matters also may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(10) and 17 CFR 200.402(a)(10), permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Aguilar, as duty officer, voted to consider the item listed for the Closed Meeting in closed session, and determined that no earlier notice thereof was possible.

The subject matter of the Closed Meeting scheduled for Tuesday, November 29, 2011 will be: A matter relating to enforcement proceedings.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 551–5400.

Dated: November 23, 2011.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–30793 Filed 11–25–11; 11:15 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65805; File No. SR–NYSEAmex–2011–89]

Self-Regulatory Organizations; NYSE Amex LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase From 20 to 30 the Number of Short Term Options Series That May Be Opened for Each Option Class That Participates in the Exchange's Short Term Option Series Program

November 22, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 18, 2011, NYSE Amex LLC (the ''Exchange'' or ''NYSE Amex'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .10 to NYSE Amex Options Rule 903 to increase the number of Short Term Options Series that may be opened for each option class that participates in the Exchange's Short Term Option Series Program (''Program'') from 20 series to 30 series. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, *http://www.nyse.com,* and *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Commentary .10 to NYSE Amex Options Rule 903 to increase the number of Short Term Options Series that may be opened for each option class that participates in the Program from 20 series to 30 series.[5]

The Program is codified in NYSE Amex Options Rule 903 and Commentary .10 thereto. This rule text provides that, after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') series of options on no more than five (5) classes[6] that expire at the close of business on the next Friday that is a business day (''Short Term Option Expiration Date'').[7]

The strike price of each Short Term Option Series will be fixed at a price per share, with approximately the same number of strike prices being opened above and below the value of the underlying security at about the time that the Short Term Option Series are initially opened for trading on the Exchange (*e.g.,* if seven series are initially opened, there will be at least three strike prices above and three strike prices below the value of the underlying security).[8] Any strike prices listed by

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] On July 12, 2005, the Commission approved the Program on a pilot basis. *See* Securities Exchange Act Release No. 52014 (July 12, 2005), 70 FR 41244 (July 18, 2005) (SR–Amex–2005–035). The Program was expanded and made permanent on June 23, 2010. *See* Securities Exchange Act Release No. 62370 (June 23, 2010), 75 FR 37870 (June 30, 2010) (SR–NYSEAmex–2010–62).

[6] In addition to the five-option class restriction, the Exchange also may list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules.

[7] If the Exchange is not open for business on a Thursday or Friday, the Short Term Option Opening Date will be the first business day immediately prior to that Thursday or Friday. Similarly, if the Exchange is not open for business on a Friday, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday. Short Term Option Series are P.M.-settled, except for Short Term Option Series on indexes, which are A.M.-settled. No Short Term Option Series may expire in the same week in which monthly or Quarterly Option Series on the same class expire.

[8] The listing criteria for Short Term Options Series contained in Commentary .10 of Rule 903 is

the Exchange must be within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange is not proposing any changes to these additional Program limitations.

The principal reason for the proposed expansion is market demand for additional Short Term Option Series in classes included in the Program in which the maximum number of series (20) has already been reached. Specifically, the Exchange has observed increased demand for additional Short Term Option Series when market-moving events, such as corporate events and large price swings, have occurred during the lifespan of an affected class included in the Program.

Currently, in order to be able to respond to market demand, the Exchange is forced to delist certain Short Term Option Series in order to make room for higher-demand Short Term Option Series.[9] The Exchange finds this method to be problematic for two reasons. First, the Exchange has received requests to maintain certain Short Term Option Series that it intends to delist to make room for higher-demand Short Term Option Series. While market participants may often access other markets for the delisted Short Term Option Series, the Exchange would prefer to provide market participants with their preferred choice of markets on which to trade—NYSE Amex. Second, this method can lead to competitive disadvantages among exchanges. If one exchange is actively responding to market demand by delisting and adding series and another exchange is the last to delist the less desirable series with open interest, then that exchange is required to maintain those series and is potentially unable to list the in-demand Short Term Option Series (because to do so could result in more than 20 Short Term Option Series being listed on that exchange). As a result, the Exchange believes that the maximum number of Short Term Option Series per class of options that participates in the Program should be increased to 30 so that exchanges can list the full panoply of Short Term Option Series that other exchanges list and that the market demands.

To effect this change, the Exchange is proposing to amend Commentary .10 to NYSE Amex Options Rule 903. Specifically, the Exchange is proposing to limit the initial number of Short Term Option Series that may be opened for trading to 20 series and to limit the number of additional Short Term Option Series that may be opened for trading to 10 series.[10]

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of Short Term Option Series for classes that participate in the Program.

The Exchange believes that the Program has provided investors with greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. Therefore, the Exchange requests a modest expansion of the current Program. It is expected that other options exchanges that have adopted a similar program will submit similar proposals.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[11] in general, and furthers the objectives of Section 6(b)(5) of the Act,[12] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that expanding the number of Short Term Option Series per option class eligible to participate in the Program will allow the investing public and other market participants to better manage their risk exposure, and would benefit investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. While the expansion of the Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of series per class. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of series per class and the Exchange does not believe that the additional price points will result in fractured liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and Rule 19b–4(f)(6) thereunder.[14]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the

made applicable to index options by Rule 903C(a). Accordingly, NYSE Amex is proposing to add a parenthetical reference to Commentary .10(c) of Rule 903 stating that in the case of index options, the calculated value of an index will be used when determining the initial strike prices of Short Term Options Series.

[9] The Exchange delists Short Term Option Series with no open interest regardless of whether those series are open for trading on another exchange.

[10] Short Term Option Series must be added pursuant to the existing listing parameters set forth in Commentary .10 to NYSE Amex Options Rule 903. Initial Short Term Option Series must be within 30% above or below the closing price of the underlying security on the preceding day. Any additional strike prices listed by the Exchange must be within 30% above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account are not considered when determining customer interest.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

Commission.[15] Therefore, the Commission designates the proposal operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEAmex–2011–89 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEAmex–2011–89. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEAmex–2011–89 and should be submitted on or before December 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–30634 Filed 11–28–11; 8:45 am]

BILLING CODE 8011–01–P

[15] *See* Securities Exchange Act Release No. 65772 (November 17, 2011) (SR–CBOE–2011–086) (order approving expansion of Short Term Option Program).

[16] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65807 File No. SR–OCC–2011–13]

Self-Regulatory Organizations; Options Clearing Corporation; Notice of Filing of Amendment No. 2 and Amendment No. 3 to Proposed Rule Relating to Relative Performance Indexes

November 22, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] notice is hereby given that on September 21, 2011, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change. On October 4, 2011, OCC filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on October 11, 2011.[3] On November 17, 2011, OCC filed Amendment No. 2 and Amendment No. 3 to the proposed rule change. The proposed rule change as amended by Amendment Nos. 1, 2 and 3 is described in Items I, II, and III below, which Items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on Amendment Nos. 2 and 3 to the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 65483 (October 4, 2011), 76 FR 62981 (October 11, 2011).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would remove any potential cloud on the jurisdictional status of relative performance indexes.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to remove any potential cloud on the jurisdictional status of relative performance indexes. NASDAQ OMX PHLX has proposed to trade options on indexes (''Alpha Index Options'') that measure the relative total returns of a stock or exchange-traded fund (''ETF'') against another stock or ETF, including where one of the reference ETFs measured by the index is a gold- or silver-based ETF.[4] Generally, a relative performance index should be considered to be an index of securities since the components of a relative performance index are ETFs or other securities. However, OCC would like to confirm the jurisdictional treatment of relative performance indexes in situations in which one of the reference securities of an underlying relative performance index is an ETF designed to measure the return of gold or silver. To accomplish this purpose, OCC is proposing to add an interpretation following Section 2 in Article XVII of OCC's By-Laws,[5] clarifying that OCC will clear and treat as securities any

[4] The staff notes that on August 17, 2011, the Commission issued an Order granting approval this proposed rule change. *See* Securities Exchange Act Release No. 34–65149, 76 FR 52729 (August 23, 2011).

[5] The staff notes that OCC is also adding a definition of ''relative performance index'' to Section 1, which will be defined as an index designed to measure the relative performance of a reference security or reference index in relation to another reference security or reference index.

relative performance index, including in situations in which one of the reference securities of a relative performance. The Commission and Commodity Futures Trading Commission (''CFTC'') have previously approved changes to OCC's By-Laws clarifying that options on the CBOE Gold ETF Volatility Index will be cleared and treated as securities.[6]

In its capacity as a ''derivatives clearing organization'' registered as such with the CFTC, OCC is filing this proposed rule change for prior approval by the CFTC pursuant to provisions of the Commodity Exchange Act (the ''CEA'') in order to foreclose any potential liability under the CEA based on an argument that the clearing by OCC of such options as securities options constitutes a violation of the CEA. The rule filing has been amended at the request of the CFTC. The CFTC requested that the rule filing be amended to clarify that OCC will clear and treat as options on securities any options on relative performance indexes for which a reference security is an exchange-traded fund designed to measure the return of gold or silver.[7]

OCC believes that the proposed interpretation of OCC's By-Laws is consistent with the purposes and requirements of Section 17A of the Exchange Act because it is designed to promote the prompt and accurate clearance and settlement of transactions in securities options, to foster cooperation and coordination with persons engaged in the clearance and settlement of such transactions, to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of such transactions, and, in general, to protect investors and the public interest. It accomplishes this purpose by reducing the likelihood of a dispute as to the Commission's jurisdiction over relative performance indexes in situations where one of the reference securities of an underlying relative performance index is a gold- or silver-based ETF. The proposed rule change is not inconsistent with the By-Laws and Rules of OCC.

[6] *See* Securities Exchange Act Release No. 34–62290, 75 FR 35861 (June 23, 2010); CFTC Order Exempting the Trading and Clearing of Certain Products Related to the CBOE Gold ETF Volatility Index and Similar Products, 75 FR 81977 (December 29, 2010).

[7] The staff notes that Amendment Nos. 2 and 3 provide that the interpretation will not include options on relative performance indexes for which a reference security is an exchange-traded fund designed to measure the return of a commodity other than gold or silver.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change as amended and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) As the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change as amended is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commissions Internet comment form (*http://www.sec.gov/rules/sro.shtml*) or send an email to *rule-comments@sec.gov*. Please include File Number SR–OCC–2011–13 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–OCC–2011–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Section, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings will also be available for inspection and copying at the principal office of OCC and on OCC's Web site at *http://www.optionsclearing.com/components/docs/legal/rules_and_bylaws/sr_occ_11_13_a_3.pdf.*

All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–OCC–2011–13 and should be submitted on or before December 20, 2011.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–30719 Filed 11–28–11; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65806; File No. SR–NYSEArca–2011–88]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase From 20 to 30 the Number of Short Term Options Series That May Be Opened for Each Option Class That Participates in the Exchange's Short Term Option Series Program

November 22, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on November 18, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Commentary .07 to NYSE Arca Options Rule 6.4 to increase the number of Short Term Options Series that may be opened for each option class that participates in the Exchange's Short Term Option Series Program (''Program'') from 20 series to 30 series. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, *http://www.nyse.com,* and *http://www.sec.gov.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Commentary .07 to NYSE Arca Options Rule 6.4 to increase the number of Short Term Options Series that may be opened for each option class that participates in the Program from 20 series to 30 series.[5]

The Program is codified in NYSE Arca Options Rule 6.4 and Commentary .07 thereto. This rule text provides that, after an option class has been approved for listing and trading on the Exchange, the Exchange may open for trading on any Thursday or Friday that is a business day (''Short Term Option Opening Date'') series of options on no more than five (5) classes[6] that expire on the next Friday that is a business day (''Short Term Option Expiration Date'').[7]

The strike price of each Short Term Option Series will be fixed at a price per share, with approximately the same number of strike prices being opened above and below the value of the underlying security (or, in the case of index options, the calculated value of the index) at about the time that the Short Term Option Series are initially opened for trading on the Exchange (e.g., if seven series are initially opened, there will be at least three strike prices above and three strike prices below the value of the underlying security). Any strike prices listed by the Exchange must be within thirty percent (30%) above or below the closing price of the underlying security from the preceding day. The Exchange is not proposing any changes to these additional Program limitations.

The principal reason for the proposed expansion is market demand for additional Short Term Option Series in classes included in the Program in which the maximum number of series (20) has already been reached. Specifically, the Exchange has observed increased demand for additional Short Term Option Series when market-moving events, such as corporate events and large price swings, have occurred during the lifespan of an affected class included in the Program.

Currently, in order to be able to respond to market demand, the Exchange is forced to delist certain Short Term Option Series in order to make room for higher-demand Short Term Option Series.[8] The Exchange finds this method to be problematic for two reasons. First, the Exchange has received requests to maintain certain Short Term Option Series that it intends to delist to make room for higher-demand Short Term Option Series. While market participants may often access other markets for the delisted Short Term Option Series, the Exchange would prefer to provide market participants with their preferred choice of markets on which to trade—NYSE Arca. Second, this method can lead to competitive disadvantages among exchanges. If one exchange is actively responding to market demand by delisting and adding series and another exchange is the last to delist the less desirable series with open interest, then that exchange is required to maintain those series and is potentially unable to list the in-demand Short Term Option Series (because to do so could result in more than 20 Short Term Option Series being listed on that exchange). As a result, the Exchange believes that the maximum number of Short Term Option Series per class of options that participates in the Program should be increased to 30 so that exchanges can list the full panoply of Short Term Option Series that other exchanges list and that the market demands.

To effect this change, the Exchange is proposing to amend Commentary .07 to NYSE Arca Options Rule 6.4. Specifically, the Exchange is proposing to limit the initial number of Short Term Option Series that may be opened for trading to 20 series and to limit the number of additional Short Term Option Series that may be opened for trading to 10 series.[9]

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the potential additional traffic associated with trading of an expanded number of Short Term Option Series for classes that participate in the Program.

The Exchange believes that the Program has provided investors with

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] On July 12, 2005, the Commission approved the Program on a pilot basis. *See* Securities Exchange Act Release No. 52013 (July 12, 2005), 70 FR 41471 (July 19, 2005) (SR–PCX–2005–32). The Program was expanded and made permanent on June 23, 2010. *See* Securities Exchange Act Release No. 62369 (June 23, 2010), 75 FR 37868 (June 30, 2010) (SR–NYSEArca–2010–59).

[6] In addition to the five-option class restriction, the Exchange also may list Short Term Option Series on any option classes that are selected by other securities exchanges that employ a similar program under their respective rules.

[7] If the Exchange is not open for business on the respective Thursday or Friday that is a business day, the Short Term Option Opening Date will be the first business day immediately prior to that respective Thursday or Friday. Similarly, if the Exchange is not open for business on the Friday of the following business week, the Short Term Option Expiration Date will be the first business day immediately prior to that Friday. Short Term Option Series are P.M.-settled, except for Short Term Option Series on indexes, which are A.M.-settled. No Short Term Option Series may expire in the same week in which monthly or Quarterly Option Series on the same class expire.

[8] The Exchange delists Short Term Option Series with no open interest regardless of whether those series are open for trading on another exchange.

[9] Short Term Option Series must be added pursuant to the existing listing parameters set forth in Commentary .07 to NYSE Arca Options Rule 6.4. Initial Short Term Option Series must be within 30% above or below the closing price of the underlying security on the preceding day. Any additional strike prices listed by the Exchange must be within 30% above or below the current price of the underlying security. The Exchange may also open additional strike prices of Short Term Option Series that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers. Market-Makers trading for their own account are not considered when determining customer interest.

greater trading opportunities and flexibility and the ability to more closely tailor their investment and risk management strategies and decisions. Therefore, the Exchange requests a modest expansion of the current Program. It is expected that other options exchanges that have adopted a similar program will submit similar proposals.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act''),[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system and, in general, to protect investors and the public interest. The Exchange believes that expanding the number of Short Term Option Series per option class eligible to participate in the Program will allow the investing public and other market participants to better manage their risk exposure, and would benefit investors by giving them more flexibility to closely tailor their investment decisions in a greater number of securities. While the expansion of the Program will generate additional quote traffic, the Exchange does not believe that this increased traffic will become unmanageable since the proposal is limited to a fixed number of series per class. Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of series per class and the Exchange does not believe that the additional price points will result in fractured liquidity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and, by its terms, does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(6) thereunder.[13]

The Exchange has requested that the Commission waive the 30-day operative delay. The Commission believes that waiver of the operative delay is consistent with the protection of investors and the public interest because the proposal is substantially similar to that of another exchange that has been approved by the Commission.[14] Therefore, the Commission designates the proposal operative upon filing.[15]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] *See* Securities Exchange Act Release No. 65772 (November 17, 2011) (SR–CBOE–2011–086) (order approving expansion of Short Term Option Program).

[15] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NYSEArca-2011–88 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca-2011–88. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–88 and should be submitted on or before December 20, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–30635 Filed 11–28–11; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–65804; File No. SR–NSX–2011–012]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Amend NSX Rules To Conform with Section 957 of the Dodd-Frank Act Prohibiting Members Voting Uninstructed Shares on Certain Matters

November 22, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 8, 2011, National Stock Exchange, Inc. (the ''Exchange'' or ''NSX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and is approving the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

National Stock Exchange, Inc. (''NSX® '' or the ''Exchange''), proposes to amend NSX Rule 13.3 to conform with the provisions of Section 957 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend NSX Rule 13.3 to prohibit ETP Holders from voting uninstructed shares in accordance with the provisions of Section 957 of the Dodd-Frank Act, which was signed by the President on July 21, 2010. Because Section 957 of the Dodd-Frank Act does not provide for a transition phase, the Exchange is proposing to adopt the proposed rule changes pursuant to Section 19(b) of the Act to comply with Section 957 of the Dodd-Frank Act and is requesting that the Commission approve the proposal on an accelerated basis.

2. Enactment of the Dodd-Frank Wall Street Reform and Consumer Protection Act

Generally, under the text of the current NSX Rule 13.3, an ETP Holder may not give a proxy to vote stock without instructions from the beneficial owner unless pursuant to the rules of another national securities exchange to which the ETP Holder is responsible. The Dodd-Frank Act requires the elimination of broker discretionary voting on matters related to executive compensation, the election of a member of the board of directors of an issuer (other than a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940 (the ''Investment Company Act'')) or any other significant matter, as determined by the Commission, by rule. Accordingly, the instant rule change proposes to modify the text of Rule 13.3 to conform with the requirements of the Dodd-Frank Act.

Section 957 of the Dodd-Frank Act amends Section 6(b)[3] of the Exchange Act to require the rules of each national securities exchange to prohibit any member organization that is not the beneficial owner of a security registered under Section 12[4] of the Exchange Act from granting a proxy to vote the security in connection with certain stockholder votes, unless the beneficial owner of the security has instructed the member organization to vote the proxy in accordance with the voting instructions of the beneficial owner. The stockholder votes covered by Section 957 include any vote (i) with respect to the election of a member of the board of directors of an issuer (other than an uncontested election of a director of an investment company registered under the Investment Company Act), (ii) executive compensation or (iii) any other significant matter, as determined by the Commission, by rule.

Accordingly, in order to carry out the requirements of Section 957 of the Dodd-Frank Act, the Exchange proposes to amend NSX Rule 13.3 to prohibit member organizations (referred on the Exchange as ''ETP Holders'') from voting uninstructed shares if the matter voted on relates to the election of certain directors, executive compensation, or any other significant matter, as determined by the Commission, by rule. The Dodd-Frank provisions regarding the election of a member of the board of directors, executive compensation and any other significant matters determined by the Commission, by rule, are proposed to be codified in new paragraph (e) of Rule 13.3. This new paragraph (e) would make explicit that notwithstanding the rules of another exchange or association to which the ETP Holder is responsible or any other exception, an ETP Holder may not give a proxy to vote without instructions from the beneficial owners on a matter related to the election of directors, executive compensation, or other significant matter determined by the Commission, by rule. The Exchange believes that the Commission has not at this time identified other significant matters with respect to which the Exchange must prohibit member organizations from voting uninstructed shares.

The Exchange also proposes adding a clarifying sentence to existing paragraph (d) of Rule 13.3 to make explicit that, notwithstanding any other exception from the Rule, including changes to equity compensation plans, an ETP Holder may not give or authorize a proxy to vote without instructions from the beneficial owner on a matter relating to executive compensation.

Additionally, the Exchange is proposing to add ''or association'' to the text of Rule 13.3(b)(2) to include the Financial Industry Regulatory Authority (''FINRA''). Thus, as proposed, Rule 13.3(b)(2) would therefore prohibit an ETP Holder from giving a proxy to vote, unless pursuant to the rules of any national securities exchange or association of which it is a member. Finally, as an administrative edit, the Exchange also proposes deleting the last sentence in Rule 13.3(d) as it is now obsolete.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b). Section 957 amends Section 6(b) of the Act by adding Section 6(b)(10).

[4] 15 U.S.C. 781.

3. Statutory Basis

The statutory basis for the proposed rule change is Section 6 of the Securities Exchange Act of 1934 [5] in general, which requires the rules of an exchange to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. More specifically, the proposed rule change is consistent with Section 6(b)(10) [6] of the Act which requires that a national securities exchange's rules must prohibit any member that is not the beneficial owner of a security registered under Section 12 from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of a board of directors of any investment company registered under the Investment Company of 1940), executive compensation, or any other significant matter, as determined by the Commission, by rule. The proposed rule change will adopt the prohibition required by Section 6(b)(10).

The proposed rule change is also consistent with Section 6(b)(5) [7] requirements that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The proposed rule change is designed to comply with the requirements of Section 957 of the Dodd-Frank Act, and the Exchange therefore believes the proposed rule changes are consistent with the Act, particularly with respect to the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended by the Dodd-Frank Act.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78f(b)(10).

[7] 15 U.S.C. 78f.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NSX–2011–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSX–2011–012. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room,100 F Street, NE., Washington DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSX–2011–012 and should be submitted on or before December 20, 2011.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

In its filing, NSX requested that the Commission approve the proposal on an accelerated basis so that the Exchange could immediately comply with the requirements imposed by the Dodd-Frank Act. After careful consideration, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[8]

The Commission believes that the proposal is consistent with Section 6(b)(10) [9] of the Act, which requires that national securities exchanges adopt rules prohibiting members that are not beneficial holders of a security from voting uninstructed proxies with respect to the election of a member of the board of directors of an issuer (except for uncontested elections of directors for companies registered under the Investment Company Act), executive compensation, or any other significant matter, as determined by the Commission by rule. The Commission also believes that the proposal is consistent with Section 6(b)(5) [10] of the Act, which provides, among other things, that the rules of the Exchange must be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Commission believes that the proposal is consistent with Section 6(b)(10) of the Act because it adopts revisions that comply with that section. As noted in the accompanying Senate Report, Section 957, which adopts Section 6(b)(10), reflects the principle that ''final vote tallies should reflect the wishes of the beneficial owners of the stock and not be affected by the wishes of the broker that holds the shares.'' [11] The proposed rule change will make NSX compliant with the new requirements of Section 6(b)(10) by specifically prohibiting, in NSX's rule language, ETP Holders, who are not a

[8] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78f(b)(10).

[10] 15 U.S.C. 78f(b)(5).

[11] *See* S. Rep. No. 111–176, at 136 (2010).

beneficial owner of a security, from granting a proxy to vote the security in connection with a shareholder vote on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule, unless the beneficial owner of the security has instructed the member to vote the proxy in accordance with the voting instructions of the beneficial owner.[12] The proposed rule language also specifically states that an ETP Holder vote on any executive compensation matter would not be permitted even if such matter would otherwise qualify for an exception from the requirements of the Rule. The Commission believes this provision will make clear that any past practice or interpretation that may have permitted an ETP Holder vote on an executive compensation matter, under NSX's existing rule, will no longer be applicable and is superseded by the newly adopted provisions.

The Commission believes that the proposal is consistent with Section 6(b)(5) of the Act because the proposal will further investor protection and the public interest by assuring that shareholder votes on the election of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940) and on executive compensation matters are made by those with an economic interest in the company, rather than by an ETP Holder that has no such economic interest, which should enhance corporate governance and accountability to shareholders.[13]

Moreover, the Commission notes that the Exchange deleted obsolete language regarding the effectiveness of Rule 13.3(d), which should provide greater clarity in Exchange's rules. The Commission further notes that the Exchange added ''or association'' to Rule 13.3(b)(2) so that an ETP Holder would be prohibited from giving a proxy to vote, unless pursuant to the rules of any national securities exchange or association of which it is a member. The Commission believes that this is consistent with ISE Rule 421 and BATS–Y Exchange, Inc. Rule 13.3(b).

Based on the above, the Commission finds that the NSX proposal will further the purposes of Sections 6(b)(5) and 6(b)(10) of the Act because it should enhance corporate accountability to shareholders while also serving to fulfill the Congressional intent in adopting Section 6(b)(10) of the Act.

The Commission also finds good cause, pursuant to Section 19(b)(2) of the Act,[14] for approving the proposed rule change prior to the 30th day after the date of publication of notice in the **Federal Register**. Section 6(b)(10) of the Act, enacted under Section 957 of the Dodd-Frank Act, does not provide for a transition phase, and requires rules of national securities exchanges to prohibit broker voting on the election of a member of the board of directors of an issuer (except for a vote with respect to the uncontested election of a member of the board of directors of any investment company registered under the Investment Company Act of 1940), executive compensation, or any other significant matter, as determined by the Commission by rule. The Commission believes that good cause exists to grant accelerated approval to the Exchange's proposal, because it will conform NSX Rule 13.3 to the requirements of Section 6(b)(10) of the Act. Moreover, the Commission notes that NSX's proposed change in 13.3(d) and proposed 13.3(e) are identical to NYSE Supplementary Material .11(12) and Nasdaq Rule 2251(d), respectively, which were previously approved by the Commission.[15] Finally, as noted above, NSX's proposed change to Rule 13.3(b)(2) is consistent with ISE Rule 421 and BATS–Y Exchange, Inc. Rule 13.3(b), and the proposed change to Rule 13(d) to eliminate obsolete language provides clarity and helps avoid confusion. Based on the above, the Commission believes the Exchange's proposed rule change raises no new regulatory issues, and therefore finds good cause to accelerate approval.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR–NSX–2011–012) be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–30633 Filed 11–28–11; 8:45 am]

BILLING CODE 8011–01–P

[12] The Commission has not, to date, adopted rules concerning other significant matters where uninstructed broker votes should be prohibited, although it may do so in the future. Should the Commission adopt such rules, we would expect NSX to adopt coordinating rules promptly to comply with the statute.

[13] As the Commission stated in approving NYSE rules prohibiting broker voting in the election of directors, having those with an economic interest in the company vote the shares, rather than the broker who has no such economic interest, furthers the goal of enfranchising shareholders. *See* Securities Exchange Act Release No. 60215 (July 1, 2009), 74 FR 33293 (July 10, 2009) (SR–NYSE–2006–92).

[14] 15 U.S.C. 78s(b)(2).

[15] *See* Securities Exchange Act Release Nos. 62874 (September 9, 2010), 75 FR 56152 (September 15, 2010) (SR–NYSE–2010–59) and 62992 (September 24, 2010), 75 FR 60844 (October 1, 2010) (SR–Nasdaq–2010–114).

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 7701]

Additional Designation of Four Entities Pursuant to Executive Order 13382

AGENCY: Department of State.

ACTION: Designation of Nuclear Reactors Fuel Company (SUREH), Noor Afzar Gostar Company (NAGCO), Fulmen Group, and Yasa Part under E.O. 13382.

SUMMARY: Pursuant to the authority in section 1(ii) of Executive Order 13382, ''Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters,'' the State Department, in consultation with the Secretary of the Treasury and the Attorney General, has determined that four Iranian entities, Nuclear Reactors Fuel Company (SUREH), Noor Afzar Gostar Company (NAGCO), Fulmen Group, and Yasa Part, have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern.

DATES: The designation by the Deputy Secretary of State of the entities identified in this notice pursuant to Executive Order 13382 is effective on November 21, 2011.

FOR FURTHER INFORMATION CONTACT: Director, Office of Counterproliferation Initiatives, Bureau of International Security and Nonproliferation, Department of State, Washington, DC 20520, tel.: (202) 647–5193.

Background:

On June 28, 2005, the President, invoking the authority, *inter alia,* of the

International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), issued Executive Order 13382 (70 FR 38567, July 1, 2005) (the ''Order''), effective at 12:01 a.m. eastern daylight time on June 30, 2005. In the Order the President took additional steps with respect to the national emergency described and declared in Executive Order 12938 of November 14, 1994, regarding the proliferation of weapons of mass destruction and the means of delivering them.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in the Annex to the Order; (2) any foreign person determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Attorney General, and other relevant agencies, to have engaged, or attempted to engage, in activities or transactions that have materially contributed to, or pose a risk of materially contributing to, the proliferation of weapons of mass destruction or their means of delivery (including missiles capable of delivering such weapons), including any efforts to manufacture, acquire, possess, develop, transport, transfer or use such items, by any person or foreign country of proliferation concern; (3) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to have provided, or attempted to provide, financial, material, technological or other support for, or goods or services in support of, any activity or transaction described in clause (2) above or any person whose property and interests in property are blocked pursuant to the Order; and (4) any person determined by the Secretary of the Treasury, in consultation with the Secretary of State, the Attorney General, and other relevant agencies, to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the Order.

Information on the additional designees is as follows:

THE NUCLEAR REACTORS FUEL COMPANY (a.k.a.: SUREH. Location: 61 Shahid Abtahi St., Karegar e Shomali, Tehran; Persian Gulf Boulevard, Km20 SW Esfahan Road, Iran)

NOOR AFZAR GOSTAR COMPANY (a.k.a.: NAGCO, NAGC, Noor Afza Gostar. Location: 4th Floor, Bloc 1, Building 133, Mirdamad Avenue, Tehran, Iran; Opp Seventh Alley, Zarafrshan Street, Eivanak Street, Qods Township)

FULMEN GROUP (a.k.a.: Fulmen Company. Locations: 167, Darya Blvd., Saadat Abad, 1466983565, Iran; No. 167 Darya Blvd., Sharak Ghods, Tehran, Iran; P.O. Box 19395/1371, Tehran; No 57, Lida St, Valiassr Ave, 19697, Tehran, Iran; No. 57, Lida St, After Vanak Sq, Vali-e Asr Ave, 19697, Tehran, Iran; Sadat Abad, Shahra Qod (Shahrak Gharb), Darya Ave, 19697 Tehran, Iran)

YASA PART (a.k.a.: Arfa Paint Company, Arfeh Company, Farasepehr Engineering Company, Hosseini Nejad Trading Co, Iran Saffron Company or Iransaffron Co, Shetab G, Shetab Gaman, Shetab Trading, Y.A.S. Co Ltd. Locations: West Lavansai, Tehran, Iran, 009821; Sa'adat Abaad, Shahrdari Sq Sarv Building, 9th Floor, Unit 5, Tehran, Iran; No 17, Balooch Alley, Vaezi St, Shariati Ave, Tehran, Iran)

Dated: November 17, 2011.

William J. Burns,

Deputy Secretary, Department of State.

[FR Doc. 2011–30721 Filed 11–28–11; 8:45 am]

BILLING CODE 4710–27–P

DEPARTMENT OF STATE

[Public Notice 7700]

Culturally Significant Objects Imported for Exhibition Determinations: ''Ancient Egypt—Art and Magic: Treasures From the Foundation Gandur pour L'Art, Geneva, Switzerland''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Ancient Egypt—Art and Magic: Treasures from the Foundation Gandur pour L'Art, Geneva, Switzerland'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Museum of Fine Arts, St. Petersburg, FL, from on or about December 17, 2011, until on or about April 29, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: November 22, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–30723 Filed 11–28–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7696]

Culturally Significant Objects Imported for Exhibition Determinations: ''In Wonderland: The Surrealist Adventures of Women Artists in Mexico and the United States''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''In Wonderland: The Surrealist Adventures of Women Artists in Mexico and the United States,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Los Angeles County Museum of Art, Los Angeles, California, from on or about January 29, 2012, until on or about May 6, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of

State (*telephone:* (202) 632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: November 22, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–30772 Filed 11–28–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7697]

Culturally Significant Objects Imported for Exhibition Determinations: ''The Holocaust''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000, I hereby determine that the objects to be included in the exhibition ''The Holocaust,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the United States Holocaust Memorial Museum, Washington, DC, from on or about December 7, 2011, until on or about December 31, 2013, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (*telephone:* (202) 632–6469). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: November 22, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–30770 Filed 11–28–11; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7698]

In the Matter of the Designation of Ibrahim Suleiman Hamad al-Hablain, Also Known as Abu Jabal, Also Known as Abu-Jabal, Also Known as Barahim Suliman H. Al Hblian, as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

Acting under the authority of and in accordance with section 1(b) of Executive Order 13224 of September 23, 2001, as amended by Executive Order 13268 of July 2, 2002, and Executive Order 13284 of January 23, 2003, I hereby determine that the individual known as Ibrahim Suleiman Hamad al-Hablain, also known as Abu Jabal, also known as Abu-Jabal, also known as Barahim Suliman H. Al Hblian, committed, or poses a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States.

Consistent with the determination in Section 10 of Executive Order 13224 that ''prior notice to persons determined to be subject to the Order who might have a constitutional presence in the United States would render ineffectual the blocking and other measures authorized in the Order because of the ability to transfer funds instantaneously,'' I determine that no prior notice needs to be provided to any person subject to this determination who might have a constitutional presence in the United States, because to do so would render ineffectual the measures authorized in the Order.

This notice shall be published in the **Federal Register**.

Dated: November 14, 2011.

William J. Burns,

Deputy Secretary of State.

[FR Doc. 2011–30762 Filed 11–28–11; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 7699]

In the Matter of the Designation of Imad Fa'iz Mughniyah also Known as Imad Fayiz Mughniyah as a Specially Designated Global Terrorist Pursuant to Section 1(b) of Executive Order 13224, as Amended

In accordance with section 1(b) of Executive Order 13224, as amended (''the Order''), I hereby determine that the individual known as Imad Fa'iz Mughniyah, also known as Imad Fayiz Mughniyah, no longer meets the criteria for designation under the Order, and therefore I hereby revoke the designation of the aforementioned individual as a Specially Designated Global Terrorist pursuant to section 1(b) of the Order.

This notice shall be published in the **Federal Register.**

Dated: October 24, 2011.

Hillary Rodham Clinton,

Secretary of State.

[FR Doc. 2011–30755 Filed 11–28–11; 8:45 a.m.]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending November 12, 2011

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (Formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2011–0200.

Date Filed: November 8, 2011.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 29, 2011.

Description: Application of Kabo Air Limited requesting an exemption and a foreign air carrier permit to provide scheduled air transportation of persons, property and mail two times weekly from Lagos, Nigeria to Houston (''IAH''), Fort Lauderdale (''FLL'') and Atlanta (''ATL'').

Renee V. Wright,

Program Manager, Docket Operations, Federal Register Liaison.

[FR Doc. 2011–30707 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice to Rescind the Notice of Intent to Develop the Environmental Impact Statement: Kings County, NY

AGENCY: Federal Highway Administration (FHWA), United States Department of Transportation (DOT).

ACTION: Notice to Rescind the Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that the FHWA will not be preparing an Environmental Impact Statement (EIS) for the proposed project involving approximately 1.5 miles of the Brooklyn-Queens Expressway (BQE), Interstate 278 (I–278) in Kings County, New York (Project Identification Number X730.56). This segment of the BQE extends from Atlantic Avenue to Sands Street and encompasses 21 structures including a unique 0.4 mile triple cantilever structure. A Notice of Intent to prepare an EIS was published in the **Federal Register** on April 20, 2009.

FOR FURTHER INFORMATION CONTACT: Jonathan D. McDade, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 11A Clinton Avenue, Suite 719, Albany, New York 12207, *Telephone:* (518) 431–4127; or

Mr. Phillip Eng, P.E., Regional Director, New York State Department of Transportation, Hunters Point Plaza, 47–40 21st Street, Long Island City, New York 11101, *Telephone:* (718) 482–4526.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation previously intended to prepare a tiered EIS to evaluate alternatives and make corridor level decisions regarding the rehabilitation or reconstruction of the existing facility and to identify a general alignment and corridor for proposed improvements along the Brooklyn Queens Expressway in Kings County, New York, from Sands Street on the east to Atlantic Avenue on the west.

The purpose of the original Project was to address various geometric, operational, and structural deficiencies associated with the structure.

The final scoping document issued in May 2010, identified a range of alternatives that would be evaluated. Further evaluation of the alternatives documented with the Draft Alternatives Evaluation Technical Memorandum, identified order of magnitude cost range from $280 million for simple rehabilitation project to $20 billion tunnel alternatives. All build alternatives require funds exceeding those available for the foreseeable future.

The NYSDOT proposes terminating the Tier 1 EIS for this project. Proposed future projects will continue necessary State of Good Repair projects to structures, roadways, and appurtenances, to ensure the continued safe operation of this important roadway corridor. With this approach, future plans for the roadway may be addressed in a comprehensive manner as funds become available.

Issued on November 16, 2011.

Jonathan D. McDade,

New York Division Administrator, Federal Highway Administration.

[FR Doc. 2011–30448 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind the Notice of Intent To Develop the Environmental Impact Statement: Kings County, NY

AGENCY: Federal Highway Administration (FHWA, United States Department of Transportation (DOT).

ACTION: Notice to rescind the Notice of Intent.

SUMMARY: The FHWA is issuing this rescinded notice to advise the public that the FHWA will not be preparing an Environmental Impact Statement (EIS) for the proposed project involving approximately 3.8 miles of the Brooklyn-Queens Expressway (BQE), Interstate 278 (I–278) in Kings County, New York (Project Identification Number X729.94). This segment of the BQE referred to as the Gowanus Expressway, extends from Sixth Avenue to the Brooklyn Battery Tunnel and contains 23 structures with a total deck area of approximately 2,000,000 square feet. A Notice of Intent to prepare an EIS was published in the **Federal Register** in November 1996.

FOR FURTHER INFORMATION CONTACT: Jonathan McDade, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 7th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, *Telephone:* (518) 431–4127; or

Mr. Phillip Eng, P.E., Regional Director, New York State Department of Transportation, Hunters Point Plaza 47–40 21st Street, Long Island City, New York 11101, *Telephone:* (718) 482–4526.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New York State Department of Transportation (NYSDOT) previously intended to prepare an EIS to evaluate alternatives regarding the rehabilitation or reconstruction of the Gowanus Expressway (BQE I–278) in Kings County, New York, from Sixth Avenue to the Brooklyn Battery Tunnel.

The purpose of the original Project was to address various geometric, operational, and structural deficiencies associated with the structures.

The Notice of Intent to prepare an EIS was published in the **Federal Register** in November 1996 following completion of an Environmental Assessment. At that time the rehabilitation alternatives had cost estimates in the range of $700 million. Subsequently, in response to public comments, a tunnel alternative was added.

During preliminary design, the cost estimates increased to approximately $2 billion for the rehabilitation alternatives while the cost estimate for the tunnel alternative was determined to be greater than $15 billion.

The economic downturn has affected all areas of government and Transportation is not an exception; recent projections show insufficient funds to meet our infrastructure needs. In response to this, NYSDOT is reevaluating its program with emphasis on preserving our existing assets to ensure a continuous system wide operations and safety of its facilities. NYSDOT proposes to terminate the EIS for this project because: (1) Structures at other locations have pressing needs which must also be addressed and (2) the cost of the alternatives being evaluated do not fall within NYSDOT's funding constraints.

To assure the continued safe operation of the Gowanus Expressway the structural deficiencies will be addressed in the intermediate term through a series of projects.

Issued on November 16, 2011.

Jonathan D. McDade,

New York Division Administrator, Federal Highway Administration.

[FR Doc. 2011–30431 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0289]

Agency Information Collection Activities; Revision of an Approved Information Collection: Designation of Agents, Motor Carriers, Brokers and Freight Forwarders

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval and invites public comment. The FMCSA requests approval to revise an ICR entitled, ''Designation of Agents, Motor Carriers, Brokers and Freight Forwarders,'' which is used to provide registered motor carriers, property brokers, and freight forwarders a means of meeting process agent requirements.

DATES: We must receive your comments on or before January 30, 2012.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2011–0289 using any of the following methods:

- *Federal eRulemaking Portal:* http://www.regulations.gov. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the Public Participation heading below. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdfE8–794.pdf.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Tura Gatling, Customer Support Team Leader, Commercial Enforcement Division, Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. *Telephone Number:* (202) 385–2412; *Email Address: tura.gatling@dot.gov.* Office hours are from 8 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Transportation (Secretary) is authorized to register forhire motor carriers of regulated commodities under the provisions of 49 U.S.C. 13902; freight forwarders under the provisions of 49 U.S.C. 13903; and property brokers under provisions of 49 U.S.C. 13904. These persons may conduct transportation services only if they are registered pursuant to 49 U.S.C. 13901. The Secretary has delegated authority pertaining to these registration requirements to the FMCSA pursuant to 49 CFR 1.73(a)(5).

Registered motor carriers (including private carriers), brokers and freight forwarders must designate an agent on whom service of notices in proceedings before the Secretary may be made (49 U.S.C. 13303). Registered motor carriers must also designate an agent for every State in which they operate and traverse in the United States during such operations, agents on whom process issued by a court may be served in actions brought against the registered transportation entity (49 U.S.C. 13304, 49 CFR 366.4). Every broker shall make a designation for each State in which its offices are located or in which contracts are written (49 U.S.C. 13304, 49 CFR 366.4). Regulations governing the designation of process agents are found at 49 CFR part 366. This designation is filed with the FMCSA on Form BOC–3, ''Designation of Agents for Service of Process.''

Title: Designation of Agents, Motor Carriers, Brokers and Freight Forwarders.

OMB Control Number: 2126–0015.

Type of Request: Revision of a currently approved collection.

Respondents: Motor carriers, freight forwarders and brokers.

Estimated Number of Respondents: 35,000.

Estimated Time per Response: 10 minutes.

Expiration Date: May 31, 2012.

Frequency of Response: Form BOC–3 must be filed by all for-hire motor carriers, freight forwarders and brokers when the transportation entity first registers with the FMCSA. All brokers shall make a designation for each State in which it has an office or in which contracts are written. Subsequent filings are made only if the motor carrier, broker or freight forwarder changes process agents.

Estimated Total Annual Burden: 5,833 hours [35,000 Form BOC–3 filings per year x 10 minutes/60 minutes to complete form = 5,833 hours].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: November 18, 2011.

Kelly Leone,

Associate Administrator for Research and Information Technology.

[FR Doc. 2011–30741 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0022]

Parts and Accessories Necessary for Safe Operation; Grant of Temporary Exemption for Innovative Electronics

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) announces its decision to grant an exemption to allow commercial motor vehicle operators to use trailer-mounted electric brake controllers which monitor and actuate electric trailer brakes based on inertial forces developed in response to the braking action of the towing vehicle. FMCSA believes that the use of trailer-mounted electric brake controllers will maintain a level of safety that is equivalent to, or greater than, the level of safety achieved without the exemption.

DATES: This exemption is effective from November 29, 2011 through November 29, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC–PSV, (202) 366–0676, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from the brake requirements of 49 CFR 393.48(d) and 49 CFR 393.49(c) for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved absent such exemption'' (49 CFR 381.305(a)).

Innovative Electronics' Request for Exemption

Innovative Electronics, Inc., applied for an exemption from 49 CFR 393.48(d) and 49 CFR 393.49(c) to allow commercial motor vehicle operators to tow trailers equipped with trailer-mounted electric brake controllers.

In its application, Innovative Electronics stated:

> Electric brakes have been used on commercial trailers for a long period of time; however each tow vehicle must currently be equipped with a brake controller in the towing vehicle which applies the trailer brakes when the driver applies the towing vehicle's brakes. Tow vehicle brake controllers are usually aftermarket devices which are manually adjustable to increase or decrease the amount of electric brake force applied to the trailer wheels to adjust for wet or dry road conditions and loaded or unloaded trailer condition. Electric brakes on commercial trailers will not operate unless the tow vehicle has a brake controller.
>
> Technology developments in electronics have allowed the development of a self-contained electric brake control device that is mounted directly to the trailer enabling it to monitor and actuate the brakes based on inertial forces developed in response to the braking action of the towing vehicle. The device is essentially an electric surge brake controller, with the electric power for the brakes provided by the tow vehicle, but the braking action of the trailer is controlled by the electric controller mounted on the trailer. A trailer using this trailer-mounted electric brake controller does not meet the ''operative at all times'' requirement of 49 CFR 393.48 and the brakes do not meet the ''apply by a single application valve'' requirement of 49 CFR 393.49.

Innovative Electronics requested that the hydraulic surge brake requirements of §§ 393.48(d) and 393.49(c) be applied to the temporary exemption, *i.e.,* substituting ''trailer-mounted electric brake controller'' for ''surge brake'' as follows:

§ 393.48 Brakes to be operative.

* * * * *

(d)(1) Trailer-mounted electric brake controllers are allowed on:

(i) Any trailer with a gross vehicle weight rating (GVWR) of 12,000 pounds or less, when its GVWR does not exceed 1.75 times the GVWR of the towing vehicle; and

(ii) Any trailer with a GVWR greater than 12,000 pounds, but less than 20,001 pounds, when it's GVWR does not exceed 1.25 times the GVWR of the towing vehicle.

(2) The gross vehicle weight (GVW) of a trailer equipped with a trailer-mounted electric brake controller may be used instead of its GVWR to calculate compliance with the weight ratios specified in paragraph (d)(1) of this section when the trailer manufacturer's GVWR label is missing.

(3) The GVW of a trailer equipped with a trailer-mounted electric brake controller must be used to calculate compliance with the weight ratios specified in paragraph (d)(1) of this section when the trailer's GVW exceeds its GVWR.

(4) The trailer equipped with a trailer-mounted electric brake controller must meet the requirements of § 393.40.

§ 393.49 Control valves for brakes.

* * * * *

(c) Trailer-mounted electric brake controller exception. This requirement is not applicable to trailers equipped with trailer-mounted electric brake controllers that satisfy the conditions specified in 393.48(d).

Without this exemption, commercial vehicle operators who tow trailers equipped with electric brakes must continue to purchase and install aftermarket trailer brake controllers in each tow vehicle which may be used to tow a commercial trailer equipped with electric brakes.

For the reasons stated above, Innovative Electronics requests that motor carriers be permitted to use trailer-mounted electric brake controllers, which would eliminate the requirement for each individual tow vehicle to be equipped with an electric brake controller. Innovative Electronics made this request because it believes the use of trailer-mounted electric brake controllers will maintain a level of safety that is equivalent to the level of safety achieved without the exemption. A copy of Innovative Electronics' application for exemption is available for review in the docket of this notice.

Comments

On February 10, 2011, FMCSA published a notice concerning Innovative Electronics' application for temporary exemption, and asked for public comment (76 FR 7623). The Agency received nine comments.

1. Shaun Kildare, on behalf of the Advocates for Highway and Auto Safety (Advocates), provided comments opposing the application for exemption. While Advocates does not oppose the concept of trailer–mounted electric brake controllers which function as surge brakes, it contends that the testing provided in support of the exemption application fails to provide adequate evidence that granting the exemption will achieve a level of safety equivalent to or greater than the level achieved by the current regulation.

2. Pam O'Toole, on behalf of the National Association of Trailer Manufacturers (NATM), commented that NATM is not opposed to an exemption for Innovative Electronics, provided that the scope of the exemption request remains as stated in the application. Ms. O'Toole stated that Innovative Electronics (or other trailer-mounted electric brake controller manufacturers) should be required to conduct additional testing, to include a wider range of tow vehicles and trailer weights, prior to submitting any petition for rulemaking to permanently revise the current definition of ''surge brake''

and/or the applicable sections of 49 CFR 393.48 and 49 CFR 393.49.

3. Paul Johnston, on behalf of Commercial Vehicle Services LLD, commented that the Innovative Electronics application for temporary exemption is in the spirit of the Agency's 2007 surge brake rulemaking, which considered—and ultimately adopted—revisions to the definition of ''surge brakes'' based on data provided to FMCSA supporting such a change. Mr. Johnston stated that the data provided by Innovative Electronics is not sufficient to support a permanent change in the definition of the term ''surge brake,'' but noted that even the limited testing conducted demonstrated that the brake performance requirements of 49 CFR 393.52 were met. Mr. Johnston also noted that the system proposed by Innovative Electronics has merit, and utilizes ''technical solutions that will no doubt be at least equivalent to the current trailer brake control systems that meet the current FMCSA regulation.'' Mr. Johnston stated that while he supports a temporary exemption, additional brake performance data will be required on a broader array of vehicles before a permanent regulatory change to the surge brake performance requirements is considered.

4. Six comments were received from individuals who have installed, and are using, the Innovative Electronics trailer-mounted brake controller for personal use. Each individual noted the ease of installation, and that the device does not have to be constantly adjusted like a conventional electric brake controller mounted in the tow vehicle. Several commenters noted that the trailer-mounted brake control activates seamlessly and responds immediately due to changing cargo loading or road conditions.

FMCSA Response

On October 7, 2005, in response to a petition for rulemaking submitted by the Surge Brake Coalition (''the Coalition''), FMCSA published a notice of proposed rulemaking (NPRM) entitled ''Parts and Accessories Necessary for Safe Operation: Surge Brake Requirements,'' to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to allow the use of surge-braked trailers in interstate commerce (70 FR 58657). Regulatory guidance issued previously by the Agency prohibited the use of surge brakes on trailers operated in interstate commerce because such brakes were inconsistent with the requirements of §§ 393.48 and 393.49 of the FMCSRs. The NPRM stated that the use of surge brakes, under the specific conditions noted in the proposal, would be consistent with the original intent of §§ 393.48 and 393.49. Specifically, the Agency stated:

> Section 393.48 requires that brakes be capable of operating at all times the vehicle is in operation on public roads. The intent of the requirement is that all commercial motor vehicles operating in interstate commerce have sufficient braking capability at all times. Based upon the information provided by the petitioner, FMCSA believes vehicles equipped with surge brakes, under the conditions being proposed in this rulemaking notice, would have sufficient braking capability at all times the vehicle combination is being operated on public roads, in interstate commerce. While surge brakes automatically release when the vehicle combination comes to a complete stop, the weight-ratio between the towing vehicle and the trailer being proposed today would ensure that the brakes on the towing vehicle are sufficient to maintain control of the combination when the surge brakes release automatically. Therefore, the agency believes the original intent of Section 393.48 would be satisfied by surge brake systems meeting the proposed requirements * * *
>
> The Agency agrees with the petitioner that advances in braking technology, and specifically in the instance of surge brakes, render the current single valve requirement in the § 393.49 design restrictive and not necessary or appropriate when considered specifically in the context of surge brakes installed on the small and midsize trailers addressed by this proposal.

On March 6, 2007, FMCSA published a final rule entitled ''Parts and Accessories Necessary for Safe Operation: Surge Brake Requirements,'' revising the FMCSRs to allow the use of automatic hydraulic inertia brake systems (surge brakes) on commercial trailers when the ratios of gross vehicle weight ratings (GVWR) for the towing vehicle and trailer are within certain limits (72 FR 9855). A surge brake is defined in 49 CFR 393.5 as ''A self-contained, permanently closed *hydraulic* brake system for trailers that relies on inertial forces, developed in response to the braking action of the towing vehicle, applied to a hydraulic device mounted on or connected to the tongue of the trailer, to slow down or stop the towed vehicle.''

A trailer-mounted electric brake control device is essentially an *electric* surge brake controller, with the electric power for the brakes provided by the tow vehicle, but the braking action of the trailer is controlled by the electronic controller mounted on the trailer. A trailer-mounted electric brake controller has the performance advantage of continuous electronic sensing of the braking forces acting on the trailer by the tow vehicle, thus: (1) Eliminating the over-application of the trailer brakes in wet or icy conditions, and (2) adjusting the application of the trailer brakes automatically to variations in trailer weight. This is not possible when relying on the crude, manual adjustments available on most in-cab tow vehicle electric brake controllers.

It is important to note that there are no Federal Motor Vehicle Safety Standards (FMVSS) that specify the brake performance requirements for trailers equipped with electric brakes. The use of trailers equipped with electric brakes is currently allowed, and the brake performance of trailers equipped with a trailer-mounted brake controller appears to be equivalent to the performance of a tow vehicle equipped with an electric trailer brake controller. The use of a trailer-mounted electronic brake controller does not alter the braking capability of a trailer equipped with electric brakes; instead, it alters the method by which the trailer electric brakes are applied.

Innovative Electronics provided limited test data showing that use of a trailer-mounted electric brake controller effectively controls the braking action of the trailer such that the tow vehicle and trailer combination meets the braking performance requirements of 49 CFR 393.52(d). FMCSA acknowledges that the combination vehicle brake performance data provided are representative of only a single trailer-mounted electronic brake controller manufacturer, and do not cover the full range of trailer-to-tow vehicle GVWR ratios as currently allowed for hydraulic surge brakes. FMCSA agrees with comments provided by Advocates, NATM, and Commercial Vehicle Services LLD that additional combination vehicle brake performance data will be necessary to support inclusion of trailer-mounted electronic brake controllers in the definition of surge brake. However, the subject exemption application is for a limited, 2-year time period, and does not represent a formal, permanent change to the FMCSRs.

While trailer-mounted electric brake controllers are currently available for non-commercial use trailers, granting the exemption will allow rental companies to rent trailers equipped with trailer-mounted electric brake controllers to commercial customers whose tow vehicles are not equipped with electric brake controllers.

For the reasons discussed above, and consistent with the Agency's previous determination that use of surge brakes is compatible with the original intent of §§ 393.48 and 393.49, the Agency believes that granting the temporary exemption to allow motor carriers to use

trailer-mounted electronic brake controllers provides a level of safety that is equivalent to the level of safety achieved without the exemption. As noted earlier, the use of a trailer-mounted electronic brake controller does not alter the braking capability of a trailer equipped with electric brakes; instead, it alters the method by which the trailer's electric brakes are applied. The Agency emphasizes that the exemption should not be construed as an exception to the brake performance requirements under § 393.52; motor carriers using trailer-mounted electric brake controllers must ensure that any commercial motor vehicle, or combination of commercial motor vehicles, complies with the brake performance requirements under § 393.52 when operated in interstate commerce.

FMCSA has decided to grant Innovative Electronics' exemption application. The FMCSA encourages any party, including Innovative Electronics, having information that motor carriers utilizing this exemption are not achieving the requisite level of safety immediately to notify the Agency. If safety is being compromised, or if the continuation of the exemption is not consistent with 49 U.S.C. 31315(b) and 31136(e), FMCSA will take immediate steps to revoke the temporary exemption.

Terms and Conditions for the Exemption

Based on its evaluation of the application for an exemption, FMCSA has decided to grant Innovative Electronics' exemption application. The Agency believes that the level of safety that will be achieved using a trailer-mounted electric brake controller during the 2-year exemption period will likely be equivalent to, or greater than, the level of safety without the exemption.

The Agency hereby grants the exemption for a two-year period, beginning *November 29, 2011* and ending *November 29, 2013.*

During the temporary exemption period, motor carriers must meet the hydraulic surge brake requirements of §§ 393.48(d) and 393.49(c), substituting ''trailer-mounted electric brake controller'' for ''surge brake'' as follows:

393.48 Brakes to be operative.

* * * * *

(d)(1) Trailer-mounted electric brake controllers are allowed on:

(i) Any trailer with a gross vehicle weight rating (GVWR) of 12,000 pounds or less, when its GVWR does not exceed 1.75 times the GVWR of the towing vehicle; and

(ii) Any trailer with a GVWR greater than 12,000 pounds, but less than 20,001 pounds, when its GVWR does not exceed 1.25 times the GVWR of the towing vehicle.

(2) The gross vehicle weight (GVW) of a trailer equipped with a trailer-mounted electric brake controller may be used instead of its GVWR to calculate compliance with the weight ratios specified in paragraph (d)(1) of this section when the trailer manufacturer's GVWR label is missing.

(3) The GVW of a trailer equipped with a trailer-mounted electric brake controller must be used to calculate compliance with the weight ratios specified in paragraph (d)(1) of this section when the trailer's GVW exceeds its GVWR.

(4) The trailer equipped with a trailer-mounted electric brake controller must meet the requirements of § 393.40.

393.49 Control valves for brakes.

* * * * *

(c) Trailer-mounted electric brake controller exception. This requirement is not applicable to trailers equipped with trailer-mounted electric brake controllers that satisfy the conditions specified in 393.48(d).

Interested parties possessing information that would demonstrate that motor carriers using the exemption for trailer-mounted electric brake controllers are not achieving the requisite statutory level of safety should provide that information to FMCSA, and that information will be placed in Docket No. FMCSA–2011–0022. Placement of information in the docket is addressed at 75 FR 33667, June 14, 2010. The Agency will evaluate any such information placed in the docket and, if safety is being compromised or if the continuation of the exemption is not consistent with 49 U.S.C. 31315(b)(4) and 31136(e), will take immediate steps to revoke this exemption, if warranted.

Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption to allow commercial motor vehicle operators to use trailer-mounted electric brake controllers which monitor and actuate electric trailer brakes based on inertial forces developed in response to the braking action of the towing vehicle.

Issued on: November 18, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–30739 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0097]

Pilot Project on NAFTA Trucking Provisions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice; request for public comment.

SUMMARY: FMCSA announces and requests public comment on data and information concerning the Pre-Authorization Safety Audits (PASAs) for motor carriers that have applied to participate in the Agency's long-haul pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities. This action is required by the ''U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007'' and all subsequent appropriations.

DATES: Comments must be received on or before December 9, 2011.

ADDRESSES: You may submit comments identified by FDMS Docket Number FMCSA–2011–0097 using any one of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–(202) 493–2251.
- *Mail:* Docket Management Facility, (M–30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is (202) 366–9329.

To avoid duplication, please use only one of these four methods. All submissions must include the Agency name and docket number for this notice. See the ''Public Participation'' heading below for instructions on submitting comments and additional information.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

Docket: For access to the docket to read background documents or

comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, *etc.*). You may review DOT's Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

Public Participation: The *http://www.regulations.gov* Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the ''help'' section of the *http://www.regulations.gov* Web site. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Marcelo Perez, FMCSA, North American Borders Division, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Telephone (512) 916–5440 Ext. 228; e-mail *marcelo.perez@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2007, the President signed into law the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (the Act), [Pub. L. 110–28, 121 Stat. 112, 183, May 25, 2007]. Section 6901 of the Act requires that certain actions be taken by the Department of Transportation (the Department) as a condition of obligating or expending appropriated funds to grant authority to Mexico-domiciled motor carriers to operate beyond the municipalities in the United States on the United States-Mexico international border or the commercial zones of such municipalities (border commercial zones).

On July 8, 2011, FMCSA announced in the **Federal Register** [76 FR 40420] its intent to proceed with the initiation of a U.S.-Mexico cross-border long-haul trucking pilot program to test and demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the border commercial zones as detailed in the Agency's April 13, 2011, **Federal Register** notice [76 FR 20807]. The pilot program is a part of FMCSA's implementation of the North American Free Trade Agreement (NAFTA) cross-border long-haul trucking provisions in compliance with section 6901(b)(2)(B) of the Act. FMCSA reviewed, assessed, and evaluated the required safety measures as noted in the July 8, 2011, notice and considered all comments received on or before May 13, 2011, in response to the April 13, 2011, notice. Additionally, to the extent practicable, FMCSA considered comments received after May 13, 2011.

In accordance with section 6901(b)(2)(B)(i) of the Act, FMCSA is required to publish in the **Federal Register**, and provide sufficient opportunity for public notice and comment comprehensive data and information on the PASAs conducted of motor carriers domiciled in Mexico that are granted authority to operate beyond the border commercial zones. This notice serves to fulfill this requirement.

FMCSA is publishing for public comment the data and information relating to one PASA that was completed on October 7, 2011. FMCSA announces that the Mexico-domiciled motor carrier in Table 1 successfully completed its PASA. Notice of this completion was also published in the FMCSA Register.

Tables 2, 3 and 4 ''Successful Pre-Authorization Safety Audit (PASA) Information'' set out additional information on the carrier(s) noted in Table 1. A narrative description of each column in the tables is provided as follows:

A. *Row Number in the Appendix for the Specific Carrier:* The row number for each line in the tables.

B. *Name of Carrier:* The legal name of the Mexico-domiciled motor carrier that applied for authority to operate in the United States (U.S.) beyond the border commercial zones and was considered for participation in the long-haul pilot program.

C. *U.S. DOT Number:* The identification number assigned to the Mexico-domiciled motor carrier and required to be displayed on each side of the motor carrier's power units. If granted provisional operating authority, the Mexico-domiciled motor carrier will be required to add the suffix ''X'' to the ending of its assigned U.S. DOT Number for those vehicles approved to participate in the pilot program.

D. *FMCSA Register Number:* The number assigned to the Mexico-domiciled motor carrier's operating authority as found in the FMCSA Register.

E. *PASA Initiated:* The date the PASA was initiated.

F. *PASA Completed:* The date the PASA was completed.

G. *PASA Results:* The results upon completion of the PASA. The PASA receives a quality assurance review before approval. The quality assurance process involves a dual review by the FMCSA Division Office supervisor of the auditor assigned to conduct the PASA and by the FMCSA Service Center New Entrant Specialist designated for the specific FMCSA Division Office. This dual review ensures the successfully completed PASA was conducted in accordance with FMCSA policy, procedures and guidance. Upon approval, the PASA results are uploaded into the FMCSA's Motor Carrier Management Information System (MCMIS). The PASA information and results are then recorded in the Mexico-domiciled motor carrier's safety performance record in MCMIS.

H. *FMCSA Register:* The date FMCSA published notice of a successfully completed PASA in the FMCSA Register. The FMCSA Register notice advises interested parties that the application has been preliminarily granted and that protests to the application must be filed within 10 days of the publication date. Protests are filed with FMCSA Headquarters in Washington, DC. The notice in the FMCSA Register lists the following information:

a. Current registration number (*e.g.,* MX–123456);

b. Date the notice was published in the FMCSA Register;

c. The applicant's name and address; and

d. Representative or contact information for the applicant.

The FMCSA Register may be accessed through FMCSA's Licensing and Insurance public Web site at *http://li-public.fmcsa.dot.gov/,* and selecting FMCSA Register in the drop down menu.

I. *U.S. Drivers:* The total number of the motor carrier's drivers approved for long-haul transportation in the United States beyond the border commercial zones.

J. *U.S. Vehicles:* The total number of the motor carrier's power units approved for long-haul transportation in the United States beyond the border commercial zones.

K. *Passed Verification 5 Elements (Yes/No):* A Mexico-domiciled motor carrier will not be granted provisional operating authority if FMCSA cannot

verify all of the following five mandatory elements. FMCSA must:

a. Verify a controlled substances and alcohol testing program consistent with 49 CFR part 40.

b. Verify a system of compliance with hours-of-service rules of 49 CFR part 395, including recordkeeping and retention;

c. Verify the ability to obtain financial responsibility as required by 49 CFR 387, including the ability to obtain insurance in the United States;

d. Verify records of periodic vehicle inspections; and

e. Verify the qualifications of each driver the carrier intends to use under such authority, as required by 49 CFR parts 383 and 391, including confirming the validity of each driver's Licencia Federal de Conductor and English language proficiency.

L. *If No, Which Element Failed:* If FMCSA cannot verify one or more of the five mandatory elements outlined in 49 CFR part 365, Appendix A, Section III, this column will specify which mandatory element(s) cannot be verified.

Please note that for items L through P below, during the PASA, after verifying the five mandatory elements discussed in item J above, FMCSA will gather information by reviewing a motor carrier's compliance with ''acute and critical'' regulations of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier. Critical regulations are those where noncompliance relates to management and/or operational controls. These regulations are indicative of breakdowns in a carrier's management controls. A list of acute and critical regulations is included in 49 CFR part 385, Appendix B, Section VII.

Parts of the FMCSRs and HMRs having similar characteristics are combined together into six regulatory areas called ''factors.'' The regulatory factors are intended to evaluate the adequacy of a carrier's management controls.

M. *Passed Phase 1, Factor 1:* A ''yes'' in this column indicates the carrier has successfully met Factor 1 (listed in part 365, Subpart E, Appendix A, Section IV(f)). Factor 1 includes the General Requirements outlined in parts 387 (Minimum Levels of Financial Responsibility for Motor Carriers) and 390 (Federal Motor Carrier Safety Regulations—General).

N. *Passed Phase 1, Factor 2:* A ''yes'' in this column indicates the carrier has successfully met Factor 2, which includes the Driver Requirements outlined in parts 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards; Requirements and Penalties) and 391 (Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors).

O. *Passed Phase 1, Factor 3:* A ''yes'' in this column indicates the carrier has successfully met Factor 3, which includes the Operational Requirements outlined in parts 392 (Driving of Commercial Motor Vehicles) and 395 (Hours of Service of Drivers).

P. *Passed Phase 1, Factor 4:* A ''yes'' in this column indicates the carrier has successfully met Factor 4, which includes the Vehicle Requirements outlined in parts 393 (Parts and Accessories Necessary for Safe Operation) and 396 (Inspection, Repair and Maintenance) and vehicle inspection and out-of-service data for the last 12 months.

Q. *Passed Phase 1, Factor 5:* A ''yes'' in this column indicates the carrier has successfully met Factor 5, which includes the hazardous material requirements outlined in parts 171 (General Information, Regulations, and Definitions), 177 (Carriage by Public Highway), 180 (Continuing Qualification and Maintenance of Packagings) and 397 (Transportation of Hazardous Materials; driving and parking rules).

R. *Passed Phase 1, Factor 6:* A ''yes'' in this column indicates the carrier has successfully met Factor 6, which includes Accident History. This factor is the recordable accident rate during the past 12 months. A recordable ''accident'' is defined in 49 CFR 390.5, and means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in: A fatality; a bodily injury to a person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

S. *Number U.S. Vehicles Inspected:* The total number of vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones and that received a vehicle inspection during the PASA. During a PASA, FMCSA inspected all power units to be used by the motor carrier in the pilot program and applied a current Commercial Vehicle Safety Alliance (CVSA) inspection decal. This number reflects the vehicles that were inspected, irrespective of whether the vehicle received a CVSA inspection decal as a result of a passed inspection.

T. *Number U.S. Vehicles Issued CVSA Decal:* The total number of inspected vehicles (power units) the motor carrier is approved to operate in the United States beyond the border commercial zones that received a CVSA inspection decal as a result of an inspection during the PASA.

U. *Controlled Substances Collection:* Refers to the applicability and/or country of origin of the controlled substance and alcohol collection facility that will be used by a motor carrier that has successfully completed the PASA.

a. ''US'' means the controlled substance and alcohol collection facility is based in the United States.

b. ''MX'' means the controlled substance and alcohol collection facility is based in Mexico.

c. ''Non-CDL'' means that during the PASA, FMCSA verified that the motor carrier is not utilizing commercial motor vehicles subject to the commercial driver's license requirements as defined in 49 CFR 383.5 (Definition of Commercial Motor Vehicle). Any motor carrier that does not operate commercial motor vehicles as defined in § 383.5 is not subject to DOT controlled substance and alcohol testing requirements.

V. *Name of Controlled Substances and Alcohol Collection Facility:* Shows the name and location of the controlled substances and alcohol collection facility that will be used by a Mexico-domiciled motor carrier who has successfully completed the PASA.

TABLE 1

Row number in Tables 2, 3, and 4 of the Appendix to today's notice	Name of carrier	USDOT No.
	Moises Alvarez Perez DBA Distribuidora Marina El Pescador ...	677516

TABLE 2—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION (SEE ALSO TABLES 3 AND 4)

Column A—row number	Column B—name of carrier	Column C—US DOT number	Column D—FMCSA register number	Column E—PASA initiated	Column F—PASA completed	Column G—PASA results	Column H—FMCSA register	Column I—US drivers	Column J—US vehicles
1	Moises Alvarez Perez DBA Distribuidora Marina El Pescador.	677516	MX–313931	10/6/2011	10/7/2011	Pass	11/21/2011 ..	1	1

TABLE 3—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION (SEE ALSO TABLES 2 AND 4)

Column A—row number	Column B—name of carrier	Column C—US DOT number	Column D—FMCSA register number	Column K—passed verification 5 elements (yes/no)	Column L—if no, which element failed	Column M—passed phase 1 factor 1	Column N—passed phase 1 factor 2	Column O—passed phase 1 factor 3	Column P—passed phase 1 factor 4
1	Moises Alvarez Perez DBA Distribuidora Marina El Pescador.	677516	MX–313931	Yes		Pass	Pass	Pass	Pass

TABLE 4—SUCCESSFUL PRE-AUTHORIZATION SAFETY AUDIT (PASA) INFORMATION AS OF SEPTEMBER 9, 2011 (SEE ALSO TABLES 2 AND 3)

Column A—row number	Column B—name of carrier	Column C—US DOT number	Column D—FMCSA register number	Column Q—passed phase I factor 5	Column R—passed phase I factor 6	Column S—Number US vehicles inspected	Column T—Number US vehicles issued CVSA decal	Column U—Controlled substance collection	Column V—Name of controlled substances and alcohol collection facility
1	Moises Alvarez Perez DBA Distribuidora Marina El Pescador.	677516	MX–313931	N/A	Pass	1	1	U.S.	RMC Testing Solutions

In an effort to provide as much information as possible for review, the application and PASA results for this carrier are posted at the Agency's Web site for the pilot program at *http://www.fmcsa.dot.gov/intl-programs/trucking/Trucking-Program.aspx.* Both documents were redacted so that personal information regarding the drivers is not released. Sensitive business information, such as the carrier's tax identification number, was also redacted. In response to previous comments received regarding the PASA notice process, FMCSA also posted copies of the vehicle inspections conducted during the PASA in the PASA document.

A list of the carrier's vehicles approved by FMCSA for use in the pilot program is also available at the above referenced Web site.

To date, no carriers have failed the PASA. The Act only requires publication of data for carriers receiving operating authority, as failure to successfully complete the PASA precludes the carrier from being granted authority to participate in the long-haul pilot program. FMCSA will publish this information to show motor carriers that failed to meet U.S. safety standards.

Request for Comments

In accordance with the Act, FMCSA requests public comment from all interested persons on the PASA information presented in this notice. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

FMCSA notes that under its regulations, preliminary grants of authority, pending the carrier's showing of compliance with insurance and process agent requirements and the resolution of any protests, are publically noticed through publication in the FMCSA Register. Any protests of such grants must be filed within 10 days of

publication of notice in the FMCSA Register.

Issued on: November 9, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–30735 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2011–0299]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 8 individuals for exemption from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision requirement.

DATES: Comments must be received on or before December 29, 2011.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket No. FMCSA–2011–0299 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Fax:* 1–(202) 493–2251.

Instructions: Each submission must include the Agency name and the docket numbers for this notice. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below for further information.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act Statement for the FDMS published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

FOR FURTHER INFORMATION CONTACT: Elaine M. Papp, Chief, Medical Programs Division, (202) 366–4001, fmcsamedical@dot.gov, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption from the Federal Motor Carrier Safety Regulations for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to or greater than the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 8 individuals listed in this notice have each requested such an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting an exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

Marion J. Coleman, Jr.

Mr. Coleman, age 40, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/70 and in his left eye, 20/25. Following an examination in 2011, his ophthalmologist noted, ''He has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Coleman reported that he has driven tractor-trailer combinations for 12 years, accumulating 1.8 million miles. He holds a Class A Commercial Driver's License (CDL) from Kentucky. His driving record for the last 3 years shows no crashes but one conviction for speeding in a Commercial Motor Vehicle (CMV). He exceeded the speed limit by 9 mph.

Layne C. Coscorrosa

Mr. Coscorrosa, 33, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/200. Following an examination in 2011, his ophthalmologist noted, ''I certify that he can perform the tasks required to operate a commercial vehicle.'' Mr. Coscorrosa reported that he has driven buses for 6 years, accumulating 150,000 miles. He holds a Class B CDL from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Lex A. Fabrizio

Mr. Fabrizio, 39, has had complete loss of vision in his left eye, due to coat's disease since age 3. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2011, his ophthalmologist noted, ''In my opinion, Lex has normal vision and can perform all visual tasks necessary in driving a commercial truck.'' Mr. Fabrizio reported that he has driven straight trucks for 5 years, accumulating 50,000 miles and tractor-trailer combinations for 5 years, accumulating 400,000 miles. He holds a Class A CDL from Utah. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Mark A. Ferris

Mr. Ferris, 55, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in his left eye, 20/70. Following an examination in 2011, his optometrist noted, ''In my professional opinion, Mr. Ferris has more than sufficient vision to perform the driving tasks required to operate any commercial motor vehicle.'' Mr. Ferris reported that he has driven straight trucks for 21 years, accumulating 651,000 miles and tractor-trailer combinations for 5 years, accumulating 150,000 miles. He holds a Class A CDL

from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Charles J. Kennedy

Mr. Kennedy, 61, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye 20/20 and in his left eye, 20/60. Following an examination in 2011, his ophthalmologist noted, ''I am able to certify in my medical opinion, you do have sufficient vision required to perform driving tasks associated with operating a commercial vehicle.'' Mr. Kennedy reported that he has driven straight trucks for 35 years, accumulating 525,000 miles and tractor-trailer combinations for 22 years, accumulating 176,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John E. Nichols

Mr. Nichols, 54, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye 20/20 and in his left eye, 20/200. Following an examination in 2011, his ophthalmologist noted, ''he does have full visual field and color vision to allow him to perform the driving tasks required to operate a commercial vehicle.'' Mr. Nichols reported that he has driven straight trucks for 30 years, accumulating 1.1 million miles. He holds a Class A CDL from Pennsylvania. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Greg W. Story

Mr. Story, 54, has had retinal detachment and repair in his right eye since June 15, 2008. The best corrected visual acuity in his right eye is light perception and in his left eye, 20/40. Following an examination in 2011, his optometrist noted, ''I feel confident that Mr. Story has adequate vision to perform his duties as a commercial truck driver.'' Mr. Story reported that he has driven straight trucks for 12 years, accumulating 249,996 miles and tractor-trailer combinations for 12 years, accumulating 999,996 miles. He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes but one conviction for speeding in a CMV. He exceeded the speed limit by 10 mph.

Gilford J. Whittle

Mr. Whittle, 62, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye 20/20 and in his left eye, count-finger vision. Following an examination in 2011, his ophthalmologist noted, ''I do not see where there have been any changes which would complicate his ability to drive a commercial vehicle at this time.'' Mr. Whittle reported that he has driven tractor-trailer combinations for 22½ years, accumulating 2.7 million miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business December 29, 2011. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: November 18, 2011.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2011–30736 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2011–0083]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this document provides the public notice that by a document dated September 27, 2011, Genesis Worldwide Logistics (GWWL) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 223.11, 231.30, 229.47, 229.115 and 229.125. FRA assigned the petition Docket Number FRA–2011–0083.

GWWL requests a waiver for TrackMobile 4650 used for in-plant switching confined to the tracks and facility known as GWWL, located in Houston, Harris County, Texas, of the following: 49 CFR 223.11, *Requirements for existing locomotives;* 231.30, *Locomotives used in switching service;* 229.47, *Emergency brake valve;* 229.115, *Slip/slide alarms;* and 229.125, *Headlights and auxiliary lights.*

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *http://www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Ave., SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by January 13, 2012 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78), or online at http://www.dot.gov/privacy.html.

Issued in Washington, DC, on November 22, 2011.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2011–30748 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number MARAD 2011 0153]

Requested Administrative Waiver of the Coastwise Trade Laws: Vessel OCEAN VUE; Invitation for Public Comments

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Notice.

SUMMARY: As authorized by 46 U.S.C. 12121, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a brief description of the proposed service, is listed below.

DATES: Submit comments on or before December 29, 2011.

ADDRESSES: Comments should refer to docket number MARAD–2011–0153. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590. You may also send comments electronically via the Internet at *http://www.regulations.gov*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Joann Spittle, U.S. Department of Transportation, Maritime Administration, 1200 New Jersey Avenue SE., Room W21–203, Washington, DC 20590. Telephone (202) 366–5979, email *Joann.Spittle@dot.gov*.

SUPPLEMENTARY INFORMATION: As described by the applicant the intended service of the vessel OCEAN VUE is:

Intended Commercial Use of Vessel: ''conduct water tour for vacationers & tourists.''

Geographic Region: ''Florida.''

The complete application is given in DOT docket MARAD–2011–0153 at *http://www.regulations.gov*. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines, in accordance with 46 U.S.C. 12121 and MARAD's regulations at 46 CFR part 388, that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels in that business, a waiver will not be granted. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD's regulations at 46 CFR Part 388.

Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78).

By Order of the Maritime Administrator.

Dated: November 17, 2011.

Julie P. Agarwal,

Secretary, Maritime Administration.

[FR Doc. 2011–30595 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Denial of Motor Vehicle Defect Petition, DP10–002

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Denial of Petition for a Defect Investigation.

SUMMARY: This notice describes the reasons for denying a petition (DP10–002) submitted to NHTSA under 49 U.S.C. Subtitle B, Chapter V, Part 552, Subpart A, requesting that the agency conduct ''an investigation of defective products manufactured by Dayton Wheel Concepts, Inc. ('Dayton Wheel' and American Wire Wheel, LLC ('American Wheel').'' The petition listed the allegedly defective products and the alleged defect (which varied by allegedly defective product).

FOR FURTHER INFORMATION CONTACT: Bob Young, Office of Defects Investigation (ODI), NHTSA; 1200 New Jersey Ave., SE; Washington, DC 20590. *Telephone:* (202) 366–4806.

SUPPLEMENTARY INFORMATION: By a letter dated December 31, 2009, Mr. Thomas M. Gisslen; 707 Miamisburg-Centerville Rd. #158; Dayton, OH 45459, through his lawyer John R. Folkerth, JR; 109 North Main Street; 500 Performance Place; Dayton, OH 45402; petitioned the NHTSA requesting that it investigate ''defective products manufactured by Dayton Wheel

Concepts, Inc. ('Dayton Wheel' and American Wire Wheel, LLC ('American Wheel')'' and that the Agency ''order * * * Dayton Wheel [to] remedy the indicated design defects and to cease and desist from the manufacture of the defective products until such time as the indicated design defects have been corrected, that all inventory of such defective product be impounded and destroyed, that all defective product be recalled, and that [Dayton Wheel] provide the notice specified in 49 U.S.C. 30118 and 30119'' [basically that Dayton conduct a safety recall of the allegedly defective product(s) and so notify the NHTSA].

NHTSA has reviewed the material provided by the petitioner and other pertinent data. The results of this review and our analysis of the petition's merit is set forth in the DP10–002 Petition Analysis Report, published in its entirety as an appendix to this notice.

For the reasons presented in the petition analysis report, there is no reasonable possibility that an order concerning the notification and remedy of a safety-related defect would be issued as a result of granting Mr. Gisslen's petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

Authority: 49 U.S.C. 30162(d); delegations of authority at CFR 1.50 and 501.8.

Issued on: November 22, 2011.

Nancy Lummen Lewis,

Associate Administrator for Enforcement.

APPENDIX

Petition ANALYSIS—DP10–002

1.0 Introduction

On January 27, 2010, the National Highway Traffic Safety Administration (NHTSA) received a December 31, 2009, letter from attorney John R. Folkerth, Jr.

on behalf of his client, Thomas M. Gisslen, petitioning the agency to conduct an ''investigation'' of certain products manufacturer by Dayton Wheel Concepts, Inc. (including those branded ''Dayton'' and ''American Wire Wheel'') for a range of alleged defects.[1] Mr. Gisslen (the ''petitioner'') is ''seeking an order requiring Dayton Wheel to remedy the [allegedly] indicated design defects and to cease and desist from the manufacture of the defective products until such time as the [allegedly] indicated design defects have been corrected, that all inventory of such [allegedly] defective product be impounded and destroyed, that all [allegedly] defective product be recalled, and that the manufacturer provide the [recall] notice specified in 49 U.S.C. 30118 and 30119.'' In support of his petition, Mr. Gisslen cites: a previous NHTSA investigation (PE02–073) and subsequent safety-related recall (03E–011) of the subject motorcycle wheels; a web-forum discussion concerning the alleged separation of three spokes in a Dayton model D452 60-spoke laced wheel installed on a 1958 MGA, photographs of purportedly defective Dayton wheel components, photographs of rim cracking in the nipple dimple area on a customer's Dayton ''BA'' radially-laced motorcycle wheel taken proximate to June 6, 2007, a web-forum discussion concerning quality concerns with a ''21 inch, forty spoke cross-laced American Wire Wheel installed on a Harley FXDB ''Street Bob''; internal Dayton email concerning wheel component material, design, and specification, and material related to alleged test failures of certain Dayton products. According to the petitioner, ''Dayton Wheel's [allegedly] defective products constitute a substantial risk of catastrophic personal injury * * * ''[2]

On March 9, 2010, NHTSA wrote to Dayton requesting certain information. The company's response was received by us on May 17, 2010. Included was a request, filed pursuant to 49 CFR part 512, that certain information provided not be released to the public.

On July 26, 2010 the petitioner, through attorney Folkerth, submitted a letter to Ron Medford, NHTSA's Senior Associate Administrator for Vehicle Safety, covering additional exhibits primarily concerning alleged product failures both in the field and during various laboratory tests. Many of the exhibits simply duplicated what was in NHTSA's public file for this petition (DP10–002).

On June 24, 2011, the petitioner (no longer represented by Mr. Folkerth) submitted additional information by Email to NHTSA. The thrust of the email (and a duplicate sent on June 28, 2011) was his opining that Dayton had not thoroughly and completely responded to our March 9th inquiry.

For purposes of this analysis, ''Dayton'' refers to Dayton Wire Wheel, Inc. including all of its divisions, subsidiaries (whether or not incorporated, including American Wire Wheel and Dayton Wheel Concepts).

In analyzing the petitioner's allegations and preparing a response, we:

✓ Reviewed the petitioner attorney's December 31, 2010, and July 26, 2010, letters and exhibits.

✓ Reviewed the petitioner's June 24, 2011, email and attachments.

✓ Reviewed the petitioner's June 28, 2011, email and attachments.

✓ Reviewed data provided by Dayton in response to our March 9, 2010, information request.

✓ Reviewed a previous NHTSA defect investigation (PE02–073) concerning the alleged sudden and unforeseen catastrophic failure of certain motorcycle wheels produced by Dayton under the brand name ''American Wire Wheel'' (AWW).

✓ Reviewed information related to Dayton's safety recall (03E–011) of the PE02–073 subject AWW wheels.

✓ Reviewed our consumer complaint database for any reports concerning products manufactured by Dayton.

✓ Informally interviewed owners of British cars equipped with Dayton wheels at three Washington, DC-area British car shows.

✓ Informally interviewed owners of motorcycles equipped with Dayton wheels at three Washington, DC-area custom motorcycle shows.

✓ Conducted a wide-ranging, web-based, search for any information (included forum threads) concerning alleged sudden, catastrophic failure of Dayton products.

The information gathered and reviewed during this comprehensive effort fails to establish that a defect trend exists in any of Dayton's products (including those identified by the petitioner). Consequently, the petition is denied.

2.0 Dayton Wire Wheel History

Founded in 1916, today Dayton Wire Wheel manufactures laced wheels for sale, predominantly, in the automotive and motorcycle aftermarket.[3] Dayton wheels were used by the Wright Brothers and Charles Lindbergh. As an original equipment supplier in the 1930's, Auburn, Cord and Duesenberg automobiles were built with Daytons. All Dayton wheels are produced in Dayton, Ohio.

3.0 The Petioners Allegations

The petitioner provided a listing of the Dayton products he alleges are defective. While discussing his claims regarding the ''radial spoke'' (i.e., the spokes do not cross another between the hub and rim) motorcycle wheels in his letter, the petitioner references an earlier NHTSA defect investigation (PE02–073) and its related safety recall (03E–011) concerning certain motorcycle wheels assembled by Dayton.[4]

3.1 The defective products alleged by the Petitioner

Mr. Gisslen alleges that the following Dayton products have the following ''defects:''[5]

Product	Alleged ''Defect''
2003–6 BA 40 Radial Spoke Motorcycle Wheel	Hub cracking at spoke flange.
19″ & 21″ Diameter Front Wheel; 40, 80 & 100 Radial Spoke Wheel * * * all applications.	Rim (rolled edge) cracking (splitting) between dimples (spoke holes).
40 Radial Spoke M/C wheel * * * all sizes and apps	Rim (rolled edge) cracking (splitting) between dimples (spoke holes).
40 Radial Spoke M/C wheel * * * all sizes and apps	Incorporating non-conforming spokes and nips [nipples] increasing risk of cracking and nip-spoke thread engagement failure.

[1] Hired on September 6, 2006, Dayton Wheel (''Dayton'') terminated Mr. Gisslen's employment on September 11, 2007. *Gisslen* v. *Dayton Wheel Concepts, Inc., et. al.* was filed October 6, 2009 on behalf of Mr. Gisslen alleging he was wrongfully terminated (Montgomery County Ohio, 2009 CV 08163). Subsequently, Mr. Gisslen petitioned the Agency.

[2] John R. Folkerth, Jr., Esq., to Administrator, National Highway Traffic Safety Administration, Washington, DC, 31 December 2009, page 5.

[3] Dayton continues to supply original equipment wheels to some vehicle mfrs., including the Morgan Motor Company of County Worcestershire in the UK.

[4] Folkerth, pages 1–2

[5] Ibid, pages 4–5.

Product	Alleged ''Defect''
Motorcycle Drive Pulleys and Rotors * * * all sizes and apps..	Defective design, material & fabrication increasing risk of cracking and failure.
Automotive wheel lugs and nuts	Extension lug bolts and nuts securing spline-mounted wheels incorporating improper material and manufacturing processes.
All Automotive Wire Wheels	Non-conforming spokes and nips incorporated into wheel assembly, resulting in loss of thread engagement and total failure.

3.2 NHTSA's Earlier Investigation and Recall

Unlike random spoke breakages and/or other infrequent laced wheel issues, sudden, unforeseen wheel collapse is of particular concern to NHTSA, especially when involving motorcycle wheels. On October 10, 2002, NHTSA opened Preliminary Evaluation (PE) 02–073 after receiving one owner's complaint alleging the sudden, unforeseen collapse of a ''High Performance Super Spoke'' aftermarket rear motorcycle wheel. This wheel had been produced by American Wire Wheel, Inc. (AWW), a division of Hulcher Enterprises in Denton, Texas. While preparing its inquiry to AWW, NHTSA found the company had sold its assets to Dayton Wheel Concepts of Dayton, Ohio (Dayton) on September 3, 2002. Included in the purchase were all materials related to AWW's production of ''Super Spoke'' model wheels. NHTSA's Office of Chief Counsel (NCC) reviewed materials related to that sale confirming that it involved only a transfer of AWW's assets. Subsequently, NCC requested information from Dunn & Bradstreet concerning AWW's current status and was told the company was no longer in business.

On October 31, 2002, Dayton received ODI's request for information concerning the Super Spoke wheels. Allegedly, prior to receiving the inquiry, only one alleged failure had been disclosed to Dayton by AWW. However, in reviewing AWW's files while preparing its response to our inquiry, Dayton found documentation of nine other Super Spoke spoke-related failures, occurring between February 2000 and September 2002. Of the nine found (for a total of 10 reports), 2 involved injury crashes and all concerned rear wheels manufactured by AWW of Denton, TX. Here is a representative owner statement concerning his August 4, 2002, incident:

''I was riding with a group of people. The rider next to me saw the wheel hopping. I felt it and tried to look down. [It] felt like I hit a bump, that's when the bike dropped and all hell broke loose.''

Photos included with the owner's documentation show the wheel collapsed when all 40 spokes pulled away from the hub. On August 24, 2001, AWW paid the owner $4,177.62 to settle his claim.

During the time it was gathering and reviewing material responsive to ODI's October 31 information request, Dayton assembled 32 Super Spoke wheels using components produced by AWW prior to Dayton's asset purchase. Of these, 24 were rear wheels. On January 21, 2003, Dayton shipped the rear wheels to both Custom Chrome and Drag Specialties, wholesale distributors specializing in aftermarket motorcycle parts.

On February 12, 2003, Dayton recalled all of the wheels it produced (32). In its ''Part 573 Defect and Noncompliance Report'' filed with the agency for recall 03E–011, it said it was taking this action after determining the wheels ''have the potential for complete failure while in use due to steel spokes pulling out of the machined aluminum hub'' with a ''potential for vehicle crash and resultant serious injuries to riders and passengers.'' In its remedy, Dayton provided, without cost, a wheel of different design to each affected customer.

4.0 Consumer Complaints

In analyzing this petition's merit, NHTSA was interested in any verifiable real world failure allegations indicating: (a) the sudden, unforeseen collapse of any Dayton product including those cited by the Petitioner and, (b) if such incidents existed, did their frequency indicate a defect trend existed?

4.1 Real World Failures Cited by the Petitioner

With his December 31, 2010, letter and June 24, 2011, email the petitioner alleged there were seven real-world incidents involving Dayton wheels. Of these, four involved automotive wheels and three concerned motorcycle wheels. He also provided information concerning one alleged failure of a motorcycle drive pulley produced by Dayton.

4.1.1 British-Cars.net—Automotive Wheels

The petitioner included a report he found on a web-based forum at British-Cars.net which he characterized as: ''A recent wheel failure report surfaced at british-cars.net. Fortunately no one was injured. The failure event was three spokes pulling out of the hub on a single wheel.'' [6] Subsequently, we found the subject wheel (a Dayton model D452) was installed on a 1958 MGA owned by a British car enthusiast in West Chester, PA.

The owner posted three different threads, the first on or about February 4, 2008, detailing his experience with the Dayton wheels. His primary concern was his impression that Dayton was not willing to honor the wheels' warranty. Subsequently, the issue was resolved to the owner's satisfaction. At no time did the wheel collapse nor was vehicle controllability compromised by the separation of three spokes on one wheel.

4.1.2 Scott's Classic Imports—Automobile Wheels

The petitioner's December 31 letter included six photographs of a Dayton model D450 15x4 wheel intended for use on Austin Healey, Lotus, MG and Triumph automobiles. According to Dayton, this September 2005 warranty submission for broken spokes came from a now defunct used car dealer in Plympton, MA. No wheel collapse, or loss of vehicle control, was reported.

4.1.3 The BA Motorcycle Wheel

The Petitioner included information concerning a 40 spoke, radially laced, rear motorcycle wheel installed on a 1998 Harley FLHRCI ''Road King Classic.'' Known internally as the ''BA'' wheel, it was a redesign of the ''Super Spoke'' wheel produced by American Wire Wheel of Denton, Texas and later recalled by Dayton. In February 2006, the owner contacted Dayton to report that the wheel rim had cracked and would not hold air. After receiving the

[6] Ibid, page 2.

wheel, Dayton found that, as a result of overloading, the rim was cracked 270 degrees circumferentially. At no time did the wheel collapse.

4.1.4 V–Twin Forum.com—Motorcycle Front Wheels

The petitioner also included two forum threads from V–Twin Forum.com, both concerning a front wheel installed on a Harley-Davidson motorcycle, one radially-laced of an unspecified make or size and the other cross-laced.

The first posting, by ''TacomaWA12'' on February 9, 2006, alleges a crash occurred while riding his Harley FLSTC when the front ''rim metal between the spokes failed and literally split the rim in two.'' He claims the bike sustained an estimated $4,400 in damage. The thrust of his post was ''how can I find out who made the wheel?'' because, as the ''3rd or 4th owner,'' the wheel manufacturer was unknown to him. There have been no entries on this thread since February 22, 2006, and the identity of the wheel manufacturer is unknown. Dayton has no record of this alleged failure and NHTSA has been unable to locate the owner to ascertain whether Dayton produced the wheel which allegedly failed.

The second thread concerned a 21'' forty spoke, cross-laced front motorcycle wheel produced under the brand name ''American Wire Wheel'' by Dayton and installed on Harley FXDB ''Street Bob.'' Beginning on September 20, 2008, the customer (aka ''Sponk'') provides a laundry list of complaints: slow delivery, poor bearing quality, fitment problems, and slow air loss. At no time was a wheel collapse indicated or alleged.

4.1.5 Motorcycle Drive Pulleys

Appendix K of the petitioner's December 31 letter purports to document manufacturing defects with Dayton-produced motorcycle belt-drive pulleys for Harley-Davidson fitment. Appendix L is a photo of an alleged customer pulley with a complete hub separation occurring in the summer of 2007. Dayton confirms that this is a customer's pulley but states it was improperly installed. Witness marks on the hub indicate improper fasteners were used to secure the pulley to the hub.

4.1.6 Complaints Identified in Gisslen Email [7]

On June 24, 2011, the Petitioner (Gisslen) alleged that two real-world incidents, within the scope of our December 31 inquiry, had not been identified by Dayton in its March 9, 2011, response. Both incidents involved Swedish customers who had fitted Dayton wire wheels to their automobiles. The first, reported to Dayton in March 2011 (and revealed to the Petitioner during discovery in his civil suit against Dayton), involved an air leakage problem with the Dayton wheels installed on a late-model Ford Thunderbird. No wheel collapse was reported.

The second, occurring in 2005, involved alleged spoke breakage on Dayton wheels installed on a modified Jaguar. No wheel collapse was reported.

Neither of the alleged ''failures'' documented in these ''complaints'' were within the scope of our December 31 inquiry.

4.2 Real-World, In-Scope, Complaints Received by Dayton Wire Wheel, Inc.

In requesting customer complaint information from Dayton, we limited the scope of our inquiry to those products identified in the Petitioner's December 31st letter:

Subject Products:

1. 2003–06 BA 40 spoke, radially-laced, motorcycle wheel;
2. 19 inch, 40 spoke, radially-laced, motorcycle wheel;
3. 19 inch, 80 spoke, radially-laced, motorcycle wheel;
4. 19 inch, 100 spoke, radially-laced, motorcycle wheel;
5. 21 inch, 40 spoke, radially-laced, motorcycle wheel;
6. 21 inch, 80 spoke, radially-laced, motorcycle wheel;
7. 21 inch, 100 spoke, radially-laced, motorcycle wheel;
8. All motorcycle drive pulleys;
9. All motorcycle brake rotors;
10. All extension spline-mounting lugs;
11. All extension spline-mounting lug nuts; and
12. All automotive wire wheels.

and the alleged defect was defined as:

Alleged defect: For Subject Products Nos. 1 through 7: any rim and or hub cracking and/or spoke/nipple thread failure *resulting in wheel collapse* [emphasis added]. For Subject Product Nos. 8 and 9: any *fracturing of the pulley or rotor* [emphasis added]. For Subject Product Nos. 10 and 11: Any failure resulting in clamping force reduction and *wheel separation* [emphasis added]. For Subject Product No. 12: any fracturing of the spoke head and/or any stripping of spoke/nipple threads *resulting in wheel collapse* [emphasis added].[8]

According to Dayton, the company ''has never had a report or instances where any problem or issue with Subject Products Nos. 1–7 resulting in a wheel collapse. Similarly, Dayton has never had any report or instance where a problem or issue with Subject Products Nos. 10 and 11 resulted in wheel separation. Dayton has never had any report or instance where any problem or issue with Subject Product No. 12 resulted in wheel collapse. With respect to Subject Products Nos. 8 and 9, Dayton has had one instance where a pulley failed * * * as a direct result of improper mounting.'' [9]

4.3 Real-World Dayton Product Failure Reports in NHTSA's Consumer Complaint Database

Using the broadest possible search criteria [10] we found five complaints involving Dayton products. Of these, four concerned the ''Super Spoke'' motorcycle wheels recalled by the company on February 12, 2003, (03E–011). The fifth documented this petition.

4.4 Real-World Dayton Product Failure Allegations on the Web

Using the broadest possible web search criteria,[11] we found no reports of Dayton product collapse and/or separation.

4.5 Real-World Dayton Product Experience

In an effort to gather additional information about consumer experience with Dayton products, particularly as it relates to wheel collapse/separation or motorcycle drive pulley collapse, we attended three local British car shows and the same number of custom motorcycle shows. While there, we found some owners displaying vehicles

[7] Email from Thomas Gisslen to Robert Young, June 24, 2011, page 2.

[8] Letter from Richard P. Boyd to Charlie Schroeder, March 9, 2010, page 2.

[9] Folkerth, page 2.

[10] Our searches included those where the manufacturer was identified as ''Dayton'' and/or ''American Wire Wheel'' (including wild cards). In the event the wheel manufacturer was not specifically identified, we searched for those complaints where ''wheel'' or ''sprocket'' appeared in the complaint summary and then manually reviewed each for any involving a Dayton product.

[11] We searched the web using readily available search engines including Google, Bing, and Yahoo for any information related to Dayton product failures. We then looked for those involving collapse and/or separation.

equipped with Dayton wheels and/or (in the case of motorcycles) drive sprockets. No problems with the Dayton products, of any sort, were claimed by any of those we queried.

5.0 Dayton Product Evaluations

5.1 Petitioner Documentation

In support of his claim that the subject products are ''defective'' thus constituting ''a substantial risk of catastrophic personal injury,'' the petitioner cites a number of tests and analyses conducted on behalf of Dayton * * * the last of these dated February 22, 2006.[12] The Petitioner has characterized these as documented test failures.

5.2 Dayton Documentation

In responding to both the petitioner's allegations and item numbers 6 and 9 of our March 9, 2010, inquiry, Dayton provided additional information and context. Two items are relevant here: First, the Finite Element Analysis conducted by RHAMM Technologies, LLC of Dayton, Ohio on behalf of Dayton in January 2006 was later found flawed because the analysis parameters did not account for work-hardening of the spoke material. Additionally, RHAMM could not define a real-world failure point within the reasonably expected load limits.[13]

The second relevant item concerns the allegation that testing conducted by Standard Test Labs (STL) on Dayton's behalf, was invalid. According to Dayton, when this allegation was first made, sometime in 2006, it retained the services of Rexnord Technical Services of Milwaukee, WI to assess STL's testing and results. Rexnord's analysis validated STL's tests and results.[14]

6.0 NHTSA Analysis

In assessing the petitioner's claim that the subject Dayton products are defective, NHTSA reviewed all reasonably available information to determine whether the products were failing in real-world use and, if so, how frequently? After conducting a comprehensive effort to uncover reports of Dayton wheel separation and/or collapse or motorcycle drive pulley failure, we found no such reports concerning Dayton wheels and one (from 2007) involving a drive pulley, the latter apparently resulting from improper installation. If, as the petitioner alleges, the testing results (from 2003–2006) indicated Dayton was producing and selling sub-standard wheels and pulleys, it would follow that real-world failures would have occurred, certainly in the last five years. NHTSA found no such evidence.

7.0 Conclusion

Based on the foregoing analysis, there is no reasonable possibility that an order concerning the notification and remedy of a safety-related defect would be issued as a result of granting Mr. Gisslen's petition. Therefore, in view of the need to allocate and prioritize NHTSA's limited resources to best accomplish the agency's safety mission, the petition is denied.

[FR Doc. 2011–30612 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–59–P

[12] John R. Folkerth, Jr., Esq., to Ronald Medford, National Highway Traffic Safety Administration, Washington, DC, 26 July 2010, attachment 8.

[13] Letter from Jeffrey P. Hinebaugh to Richard P. Boyd, NHTSA, Washington, DC, 14 May 2010, item number 9.

[14] Ibid.

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket No. PHMSA–2011–0223 (Notice No. 11–12)]

Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requests (ICR) abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and comments. The ICRs describe the nature of the information collections and their expected burden. A **Federal Register** Notice with a 60-day comment period soliciting comments on these collections of information was published in the **Federal Register** on September 14, 2011 [76 FR 56872] under Docket No. PHMSA–2011–0223 (Notice No. 11–9).

DATES: Interested persons are invited to submit comments on or before December 29, 2011.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to the Office of Management and Budget (OMB), *Attention:* Desk Officer for PHMSA, 725 17th Street NW., Washington, DC 20503. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Steven Andrews or T. Glenn Foster, U.S. Department of Transportation, Standards and Rulemaking Division (PHH–10), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE, East Building, 2nd Floor, Washington, DC. 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

Section 1320.8(d), Title 5, Code of Federal Regulations requires Federal agencies to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in 49 CFR Parts 172 and 173 of the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180). PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) abstract of the information collection activity; (4) description of affected persons; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approvals in the **Federal Register**.

PHMSA requests comments on the following information collections:

Title: Testing, Inspection, and Marking Requirements for Cylinders.

OMB Control Number: 2137–0022.

Summary: Requirements in § 173.301 for qualification, maintenance and use of cylinders require that cylinders be periodically inspected and retested to ensure continuing compliance with packaging standards. Information

collection requirements address registration of retesters and marking of cylinders by retesters with their identification number and retest date following the completion of required tests. Records showing the results of inspections and retests must be kept by the cylinder owner or designated agent until expiration of the retest period or until the cylinder is re-inspected or retested, whichever occurs first. These requirements are intended to ensure that retesters have the qualifications to perform tests and to identify to cylinder fillers and users that cylinders are qualified for continuing use. Information collection requirements in § 173.303 require that fillers of acetylene cylinders keep, for at least 30 days, a daily record of the representative pressure to which cylinders are filled. PHMSA did not receive any comments pertaining to this OMB control number in response to the **Federal Register** Notice published on September 14, 2011.

Affected Public: Fillers, owners, users and retesters of reusable cylinders.

Recordkeeping:

Number of Respondents: 139,352.

Total Annual Responses: 153,287.

Total Annual Burden Hours: 171,642.

Frequency of collection: On occasion.

Title: Hazardous Materials Security Plans.

OMB Control Number: 2137–0612.

Summary: To assure public safety, shippers and carriers must take reasonable measures to plan and implement procedures to prevent unauthorized persons from taking control of, or attacking, hazardous materials shipments. Part 172 of the HMR requires persons who offer or transport certain hazardous materials to develop and implement written plans to enhance the security of hazardous materials shipments. The security plan requirement applies to shipments of: (1) A highway route-controlled quantity of a Class 7 (radioactive) material; (2) more than 25 kg (55 lbs) of a Division 1.1, 1.2, or 1.3 (explosive) material; (3) more than 1 L (1.06 qt) per package of a material poisonous by inhalation in hazard zone A; (4) a shipment of hazardous materials in a bulk packaging with a capacity equal to or greater than 13,248 L (3,500 gal) for liquids or gases, or greater than 13.24 cubic meters (468 cubic feet) for solids; (5) a shipment that requires placarding; and (6) select agents. Select agents are infectious substances identified by CDC as materials with the potential to have serious consequences for human health and safety if used illegitimately. A security plan will enable shippers and carriers to reduce the possibility that a hazardous materials shipment will be used as a weapon of opportunity by a terrorist or criminal. This information collection was originally included in the **Federal Register** Notice published on September 14, 2011 [76 FR 56872] under Docket No. PHMSA–2011–0223 (Notice No. 11–9). However, since the September 14 publication, this information collection has been renewed in a separate OMB action. The expiration date has been extended until August 31, 2014.

Affected Public: Shippers and carriers of hazardous materials in commerce.

Recordkeeping:

Number of Respondents: 54,999.

Total Annual Responses: 44,880.

Total Annual Burden Hours: 372,064.

Frequency of collection: On occasion.

Title: Subsidiary Hazard Class and Number/Type of Packagings.

OMB Control Number: 2137–0613.

Summary: The HMR require that shipping papers and emergency response information accompany each shipment of hazardous materials in commerce. In addition to the basic shipping description information, we also require the subsidiary hazard class or subsidiary division number(s) to be entered in parentheses following the primary hazard class or division number on shipping papers. This requirement was originally required only by transportation by vessel. However, the lack of such a requirement posed problems for motor carriers with regard to complying with segregation, separation, and placarding requirements, as well as posing a safety hazard. For example, in the event the motor vehicle becomes involved in an accident, when the hazardous materials being transported include a subsidiary hazard such as ''dangerous when wet'' or a subsidiary hazard requiring more stringent requirements than the primary hazard, there is no indication of the subsidiary hazards on the shipping papers and no indication of the subsidiary risks on placards. Under circumstances such as motor vehicles being loaded at a dock, labels are not enough to alert hazardous materials employees loading the vehicles, nor are they enough to alert emergency responders of the subsidiary risks contained on the vehicles. Therefore, we require the subsidiary hazard class or subsidiary division number(s) to be entered on the shipping paper, for purposes of enhancing safety and international harmonization.

We also require the number and type of packagings to be indicated on the shipping paper. This requirement makes it mandatory for shippers to indicate on shipping papers the numbers and types of packages, such as drums, boxes, jerricans, etc., being used to transport hazardous materials by all modes of transportation.

Shipping papers serve as a principal means of identifying hazardous materials during transportation emergencies. Firefighters, police, and other emergency response personnel are trained to obtain the DOT shipping papers and emergency response information when responding to hazardous materials transportation emergencies. The availability of accurate information concerning hazardous materials being transported significantly improves response efforts in these types of emergencies. The additional information would aid emergency responders by more clearly identifying the hazard. PHMSA did not receive any comments pertaining to this OMB control number in response to the **Federal Register** Notice published on September 14, 2011.

Affected Public: Shippers and carriers of hazardous materials in commerce.

Recordkeeping:

Number of Respondents: 250,000.

Total Annual Responses: 6,337,500.

Total Annual Burden Hours: 17,604.

Frequency of collection: On occasion.

Issued in Washington, DC on November 22, 2011.

Delmer F. Billings,

Senior Regulatory Advisor, Standards and Rulemaking Division.

[FR Doc. 2011–30621 Filed 11–28–11; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 1077X]

Wiregrass Central Railway, LLC—Abandonment Exemption—in Coffee County, AL

On November 9, 2011, Wiregrass Central Railway, LLC (WCR) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 to exempt from the prior approval requirements of 49 U.S.C. 10903 WCR's abandonment of a 1.2-mile line of railroad extending between milepost 820.0 and milepost 821.2 in Enterprise, in Coffee County, Ala. (the line).[1] The line traverses United States Postal

[1] The line is part of a 21.2-mile rail line that WCR acquired from Wiregrass Central Railroad Company, Inc. *See Wiregrass Cent. Ry.—Acquis. & Operation Exemption—Wiregrass Cent. R.R.,* FD 35489 (STB served Apr. 22, 2011).

Service Zip Code 36330 and includes no stations.

WCR states that, based on information in WCR's possession, the line does not contain Federally granted rights-of-way. Any documentation in WCR's possession will be made available promptly to those requesting it.

The interests of railroad employees will be protected by the conditions set forth in *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, In Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by February 27, 2012.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by a $1,500 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than December 19, 2011. Each trail request must be accompanied by a $250 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to Docket No. AB 1077X and must be sent to: (1) Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001; and (2) Melanie B. Yasbin, 600 Baltimore Avenue, Suite 301, Towson, MD 21204. Replies to the petition are due on or before December 19, 2011.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Assistance, Governmental Affairs and Compliance at (202) 245–0238 or refer to the full abandonment regulations at 49 CFR pt. 1152. Questions concerning environmental issues may be directed to the Board's Office of Environmental Analysis (OEA) at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–(800) 877–8339.

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by OEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact OEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA generally will be within 30 days of its service.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: November 17, 2011.

By the Board.

Rachel D. Campbell,

Director, Office of Proceedings.

Raina S. White,

Clearance Clerk.

[FR Doc. 2011–30295 Filed 11–28–11; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

November 23, 2011.

The Department of the Treasury will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, on or after the date of publication of this notice.

DATES: Comments should be received on or before December 29, 2011 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@OMB.EOP.GOV* and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave., NW., Suite 11020, Washington, DC 20220, or on-line at *http://www.PRAComment.gov.*

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov,* or the entire information collection request may be found at *http://www.reginfo.gov.*

Small Business Lending Fund (SBLF)

OMB Number: 1505–0228.

Type of Review: Revision a currently approved collection.

Title: Requirement to report quarterly data on Small Business Lending.

Abstract: Once accepted into the SBLF program, a bank is required to submit a Supplemental Report each quarter. The Supplemental Report serves two purposes. First, the Quarterly Supplemental Report is used to determine the bank's small business lending baseline. Second, every quarter thereafter, the bank files a Supplemental Report quarterly so that Treasury can assess the change in the small business lending for the previous quarter. That change from the historical baseline is used to set the dividend rate for the next quarter.

Affected Public: Banks and lending institutions that were approved by Treasury to participate in the Small Business Lending Fund.

Estimated Total Annual Burden Hours: 5,600.

Dawn D. Wolfgang,

Treasury PRA Clearance Officer.

[FR Doc. 2011–30718 Filed 11–28–11; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. OCC–2011–0022]

RIN 1557–AD36

Guidance on Due Diligence Requirements in Determining Whether Investment Securities Are Eligible for Investment

AGENCY: Office of the Comptroller of the Currency, Treasury (OCC).

ACTION: Proposed guidance with request for comment.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is proposing guidance to assist national banks and Federal savings associations in meeting due diligence requirements in assessing credit risk for portfolio investments.

DATES: Comments must be received December 29, 2011.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by the Federal eRulemaking Portal or email, if possible. Please use the title ''Guidance on Due Diligence Requirements in Determining Whether Investment Securities Are Eligible for Investment'' to facilitate the organization and review of the comments. You may submit comments by any of the following methods:

- *Email: regs.comments@occ.treas.gov.*
- *Mail:* Office of the Comptroller of the Currency, 250 E Street SW., Mail Stop 2–3, Washington, DC 20219.

- *Fax:* (202) 874–5274.
- *Hand Delivery/Courier:* 250 E Street SW., Mail Stop 2–3, Washington, DC 20219.

Instructions: You must include ''OCC'' as the agency name and ''Docket Number OCC–2011–0022'' in your comment. In general, OCC will enter all comments received into the docket and publish them on the Regulations.gov Web site without change, including any business or personal information that you provide such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

You may review comments and other related materials that pertain to this proposed rulemaking by any of the following methods:

- *Viewing Comments Personally:* You may personally inspect and photocopy comments at the OCC, 250 E Street SW., Washington, DC. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 874–4700. Upon arrival, visitors will be required to present valid government-issued photo identification and submit to security screening in order to inspect and photocopy comments.
- *Docket:* You may also view or request available background documents and project summaries using the methods described above.

FOR FURTHER INFORMATION CONTACT: Kerri Corn, Director for Market Risk, Credit and Market Risk Division, (202) 874–4660; or Carl Kaminski, Senior Attorney, or Kevin Korzeniewski, Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Eugene H. Cantor, Counsel, Securities and Corporate Practices Division, (202) 874–5202, Office of the Comptroller of the Currency, 250 E Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION: Section 939A of the Dodd-Frank Wall Street Reform and Consumer Protection Act [1] requires each Federal agency, within one year of enactment, to review: (1) Any regulations that require the use of an assessment of the creditworthiness of a security or money market instrument, and (2) any references to or requirements in those regulations regarding credit ratings. Section 939A then requires the Federal agencies to modify the regulations identified during the review to substitute any references to or requirements of reliance on credit ratings with such standards of creditworthiness that each agency determines to be appropriate. The statute provides that the agencies shall seek to establish, to the extent feasible, uniform standards of creditworthiness, taking into account the entities the agencies regulate and the purposes for which those entities would rely on such standards.

The Office of the Comptroller of the Currency (OCC) is issuing a notice of proposed rulemaking (NPRM), published on the same date as this proposed guidance. The NPRM proposes to remove references to credit ratings in the OCC's non-capital regulations. In particular, the OCC proposes to amend the definition of ''investment grade'' in 12 CFR part 1 to no longer reference credit ratings. Instead, ''investment grade'' securities would be those where the issuer has an adequate capacity to meet the financial commitments under the security for the projected life of the investment. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected. Generally, securities with good to very strong credit quality will meet this standard. National banks will have to meet this new standard before purchasing investment securities.

OCC also is proposing to define the term ''investment grade,'' for Federal savings associations, as it is used in Part 160, to refer to 12 U.S.C. 1831e. This effectively will reference the current ratings-based requirement until such time as the requirement is replaced by the FDIC. In addition, the OCC is proposing to remove references to credit ratings applicable to commercial paper and corporate debt securities contained in §§ 160.40 and 160.93(e)(5)(ii). Under the revised rules, savings associations would be permitted to invest in commercial paper if it meets the standards set forth at 12 U.S.C. 1831e(d)(1), which currently limits savings associations to purchasing corporate debt securities that are of investment grade, but will, after July 21, 2012, include a new creditworthiness standard established by the FDIC.

In addition, national banks and Federal savings associations should continue to maintain appropriate ongoing reviews of their investment portfolios to verify that their portfolios meet safety and soundness requirements that are appropriate for the institution's risk profile and for the size and complexity of their portfolios. The OCC is issuing this proposed supervisory guidance explaining the due diligence national banks and Federal savings associations should conduct in purchasing investment securities for their investment portfolios and to reiterate supervisory expectations for the securities the institution actually purchases.

Text of Proposed Guidance

The text of the proposed supervisory guidance on due diligence national banks and Federal savings associations should conduct in assessing credit risk for portfolio investments as required by 12 CFR Part 1and 12 CFR part 160 (specifically, 12 CFR 1.5 and 12 CFR 160.1(b) and 160.40(c)) follows:

Purpose

The Office of the Comptroller of the Currency (OCC) is issuing this guidance (''Guidance'') to clarify steps national banks ordinarily should take to demonstrate they have properly verified their investments meet the newly established credit quality standards under 12 CFR part 1 and steps national banks and Federal savings associations should take to demonstrate they met due diligence requirements when purchasing investment securities and conducting ongoing reviews of their investment portfolios. Federal savings associations will need to follow FDIC requirements when that Agency promulgates credit quality standards under 12 U.S.C. 1831e. These standards determine whether national banks may purchase, sell, deal in, underwrite, and hold securities consistent with the authority contained in 12 U.S.C. 24(Seventh), and whether Federal saving associations may invest in, sell, or otherwise deal in securities consistent with the authority contained in 12 U.S.C. 1464(c). The activities of national banks and Federal savings associations also must be consistent with safe and sound banking practices, and this guidance reminds national banks and Federal savings associations of the supervisory risk management expectations associated with permissible investment portfolio holdings under Part 1 and Part 160.

Background

Parts 1 and 160 provide standards for determining whether securities have appropriate credit quality and marketability characteristics to be purchased and held by national banks or Federal savings associations. These requirements also establish concentration limits on the amount of investment securities an institution may

[1] Public Law 111–203, Section 939A (July 21, 2010) (Dodd-Frank Act).

hold for its own account. An investment security must be ''investment grade.'' For the purpose of Part 1, ''investment grade'' securities are those where the issuer has an adequate capacity to meet the financial commitments under the security for the projected life of the investment. An issuer has an adequate capacity to meet financial commitments if the risk of default by the obligor is low and the full and timely repayment of principal and interest is expected. Generally, securities with good to very strong credit quality will meet this standard.

National banks and Federal savings associations must be able to demonstrate that their investment securities meet applicable credit quality standards. This Guidance provides criteria that national banks can use in meeting Part 1 credit quality standards and that national banks and Federal savings associations can use in meeting due diligence requirements.

The OCC has had a long-standing expectation that national banks implement a risk management process to ensure credit risk, including credit risk in the investment portfolio, is effectively identified, measured, monitored, and controlled. *The 1998 Interagency Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities* (Policy Statement) contains risk management standards for the investment activities of banks and savings associations.[2] The Policy Statement emphasizes the importance of an institution conducting a thorough credit risk analysis before and periodically after the acquisition of a security. Such analyses allow an institution to understand and effectively manage the risks within its investment portfolio, including credit risk, and are an essential element of a sound investment portfolio risk management framework. Other previously issued guidance that supplements OCC investment standards are OCC 2009–15, ''Risk Management and Lessons Learned'' (which highlights lessons learned during the market disruption and re-emphasizes the key principles discussed in previously issued OCC guidance on portfolio risk management); OCC 2004–25, ''Uniform Agreement on the Classification of Securities'' (which describes the importance of management's credit risk analysis and its use in examiner decisions concerning investment security risk ratings and classifications); and OCC 2002–19, ''Supplemental Guidance, Unsafe and Unsound Investment Portfolio Practices'' (which alerts banks to the potential risk to future earnings and capital from poor investment decisions made during periods of low levels of interest rates and emphasizes the importance of maintaining prudent credit, interest rate, and liquidity risk management practices to control risk in the investment portfolio).[3]

Determining Whether Securities Are Permissible Prior to Purchase

The OCC's elimination of references to credit ratings, in accordance with the Dodd-Frank Act, does not substantively change the standards institutions should use when deciding whether securities are eligible for purchase under Part 1. To be eligible for purchase under Part 1, investments must meet the standard of being ''investment grade.'' Investments are considered ''investment grade'' if they meet the regulatory standard for credit quality. To meet this standard, a national bank must be able to determine that an investment security has (1) Low risk of default by the obligor, and (2) the full and timely repayment of principal and interest is expected, over the expected life of the investment.[4] A Federal savings association must meet the same standard when purchasing certain municipal revenue bonds pursuant to 12 CFR 160.24, and they must meet the standards in 12 U.S.C. 1831e when purchasing corporate debt securities.

The OCC expects national banks and Federal savings associations to conduct an appropriate level of due diligence to determine that an investment security is a permissible investment. This may include consideration of internal analyses, third party research and analytics including external credit ratings, internal risk ratings, default statistics, and other sources of information as appropriate for the particular security. The depth of the due diligence should be a function of the security's credit quality, the complexity of the structure, and the size of the investment. The more complex a security's structure is, the more credit-related due diligence an institution should perform, even when the credit quality is perceived to be very high. Bank management should ensure they understand the security's structure and how the security will perform in different default environments, and should be particularly diligent when purchasing structured securities.[5] The OCC expects national banks and Federal savings associations to consider a variety of factors relevant to the particular security when determining whether a security is a permissible and sound investment. The range and type of specific factors an institution should consider will vary depending on the particular type and nature of the securities. As a general matter, a national bank or Federal savings association will have a greater burden to support its determination if one factor is contradicted by a finding under another factor.

Although Part 1 has no specified quality requirements for type I securities, as a matter of prudent banking practice, national banks should conduct an appropriate level of due diligence prior to purchasing a material amount (to the institution) of these type I securities.

By way of example, appropriate factors for designated types of instruments may include but not be limited to the following:

[2] On April 23, 1998, the FRB, FDIC, NCUA, OCC, and OTS issued the ''Supervisory Policy Statement on Investment Securities and End-User Derivatives Activities.'' As issued by the OTS, the Policy Statement applied to both state and Federal savings associations.

[3] Similar requirements also apply to Federal savings associations as set forth in OTS Examination Handbook Section 540, *Investment Securities* (January 2010).

[4] Federal savings associations may invest in and hold investment securities under section 5(c) of the Home Owners' Loan Act (HOLA), to the extent specified in regulations of the OCC. While OCC regulations imposing investment limitations generally apply to Federal savings associations, the Federal Deposit Insurance Act (FDIA), 12 U.S.C. 1831e(d)(1) also applies. Under this provision, savings associations currently are prohibited from investing in corporate debt securities unless they are rated ''investment grade.'' However, the Dodd-Frank Act provides that as of July 21, 2012, this statutory requirement will be replaced by standards of creditworthiness established by the FDIC. Pub. L. 111–203, Section 939(a)(2) (July 21, 2010).

[5] For example, a national bank or Federal savings association should be able to demonstrate an understanding of the effects on cash flows of a structured security assuming varying default levels in the underlying assets.

Key factors	Corporate bonds	Municipal government general obligations	Revenue bonds	Structured products
Confirm spread to U.S. Treasuries is consistent with bonds of similar credit quality	X	X	X	X
Confirm risk of default is low and consistent with bonds of similar credit quality	X	X	X	X
Confirm capacity to pay through internal credit analysis and/or other third party analytics, as appropriate for the particular security	X	X	X	X
Evaluate the soundness of a municipal's budgetary position and stability of its tax revenues		X		
Understand local demographics/economics	X	X	X	
Assess the source and strength of revenue structure for municipal authorities			X	
Understand the class or tranche and its relative position in the securitization structure				X
Assess the position in the cash flow waterfall				X
Understand loss allocation rules, the potential impact of performance triggers, and support provided by credit enhancements				X
Evaluate and understand the quality of the underwriting of the underlying collateral as well as any risk concentrations				X
Determine whether current underwriting is consistent with the original underwriting underlying the historical performance of the collateral and consider the affect of any changes.				X
Assess the structural subordination and determine if adequate given current underwriting standards				X
Analyze and understand the impact of collateral deterioration on tranche performance and potential credit losses under stress scenarios				X

Maintaining an Appropriate and Effective Portfolio Risk Management Framework

National banks and Federal savings associations must have in place an appropriate risk management framework for the level of risk in their investment portfolios. Failure to maintain an adequate investment portfolio risk management process, which includes understanding key portfolio risks, is considered an unsafe and unsound practice. Twelve CFR part 1 emphasizes that national bank purchases of investment securities must comply with safe and sound banking practices. Under 12 CFR 1.5, national banks must consider, as appropriate, liquidity and price risk, as well as other risks presented by proposed securities activities. Federal savings associations also must conform to safe and sound banking practices and similarly must consider appropriate investment portfolio risks in their purchases of investment securities. Applicable guidance includes TB 73a, Thrift Activities Asset Quality, Investment Securities (December 18, 2001) and TB 13a, Thrift Activities Interest Rate Risk, Investment Securities, and Derivatives Activities (December 1, 1998).

Having a strong and robust risk management framework appropriate for the level of risk in an institution's investment portfolio is particularly critical for managing portfolio credit risk. A key role for management in the oversight process is to translate the board of directors' tolerance for risk into a set of internal operating policies and procedures that govern the institution's investment activities. Specifically, investment policies should provide credit risk concentration limits. Such limits may apply to concentrations relating to a single or related issuer, a geographical area, and obligations with similar characteristics. Institutions possessing investment portfolios that lack diversification in one of the aforementioned areas should enhance their monitoring and reporting systems. Safety and soundness principles warrant effective concentration risk management programs to ensure that credit exposures do not reach an excessive level.

Institutions should identify and measure the risks of their investments periodically after purchase. Such analyses allow an institution to understand and effectively manage the risks within its investment portfolio, including credit risk, and are an essential element of a sound investment portfolio risk management framework. Exposure to each type of risk for each security should be measured and aggregated with similar exposures on an institution-wide basis. Risk measurement should be obtained from sources independent of sellers or counterparties and should be periodically validated. Irrespective of any contractual or other arrangements, institutions are responsible for understanding and managing the risks of all of their transactions.

Request for Comment

The OCC requests comment on all aspects of this proposed guidance. Specifically, the OCC would like commenters' views on:

1. Does the proposed guidance sufficiently assist national banks in making determinations of which securities would be considered ''investment grade?'' Does it sufficiently assist Federal savings associations in meeting their due diligence requirements? How could the guidance be improved?

2. Should the guidance provide differentiations based on size and scope of operations for national banks and Federal savings associations with respect to consideration of the factors relevant to whether a national bank or Federal savings association has satisfied its due diligence requirements or whether a particular security has good credit quality?

3. Does the proposed guidance adequately reflect the bulk of investment securities purchased by national banks and Federal savings associations? Are there other investments that receive credit ratings that should be included?

Dated: November 18, 2011.

John Walsh,

Acting Comptroller of the Currency.

[FR Doc. 2011–30420 Filed 11–28–11; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Unblocking of One Specially Designated Terrorist Pursuant to Executive Order 12947

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is removing the name of one of individual, whose property and interests in property have been blocked pursuant to Executive Order 12947 of January 25, 1995, *Blocking Property and Prohibiting Transactions With Persons Who Threaten to Disrupt the Middle East Peace Process,* from the list of Specially Designated Nationals and Blocked Persons (''SDN List'').

DATES: The removal of this individual from the SDN List is effective as of Tuesday, November 22, 2011.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Sanctions Compliance and Evaluation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, *tel.:* 202/622–2490.

SUPPLENTARY IMFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC are available from OFAC's Web site (*http://www.treasury.gov/ofac).* Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, *tel.:* 202/622–0077.

Background

On January 25, 1995, the President issued Executive Order 12947 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, imposing economic sanctions on persons who threaten to disrupt the Middle East peace process. The President identified in the Annex to the Order various individuals and entities as subject to the economic sanctions. The Order authorizes the Secretaries of State and of the Treasury, in coordination with each other and with the Attorney General, to designate additional persons determined to meet certain criteria set forth in the Order.

The Department of the Treasury's Office of Foreign Assets Control has determined that this individual should be removed from the SDN List.

The following individual is removed from the SDN List:

Individual

1. MUGHNIYAH, Imad Fa'iz (a.k.a. MUGHNIYAH, Imad Fayiz); DOB 07 Dec 1962; POB Tayr Dibba, Lebanon; Passport 432298 (Lebanon); Senior Intelligence Officer of HIZBALLAH (individual)[SDT]

The removal of this individual from the SDN List is effective as of Tuesday, November 22, 2011. All property and interests in property of the individual that are in or hereafter come within the United States or the possession or control of United States persons are now unblocked.

Dated: November 21, 2011.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2011–30614 Filed 11–28–11; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Clinical Science Research and Development Service; Cooperative Studies Scientific Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that a meeting of the Clinical Science Research and Development Service Cooperative Studies Scientific Evaluation Committee will be held on December 20, 2011, at the Hamilton Crowne Plaza, 1001 14th Street NW., Washington, DC. The meeting is scheduled to begin at 8 a.m. and end at 4 p.m.

The Committee advises the Chief Research and Development Officer through the Director of the Clinical Science Research and Development Service on the relevance and feasibility of proposed projects and the scientific validity and propriety of technical details, including protection of human subjects.

The session will be open to the public for approximately 30 minutes at the start of the meeting for the discussion of administrative matters and the general status of the program. The remaining portion of the meeting will be closed to the public for the Committee's review, discussion and evaluation of research and development applications.

During the closed portion of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies, staff and consultant critiques of research proposals and similar documents, and the medical records of patients who are study subjects, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. As provided by section 10(d) of Public Law 92–463, as amended, closing portions of this meeting is in accordance with 5 U.S.C. 552b(c)(6) and (c)(9)(B).

Those who plan to attend should contact Dr. Grant Huang, Deputy Director, Cooperative Studies Program (10P9CS), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 at (202) 443–5600, or by email at *grant.huang@va.gov*.

Dated: November 22, 2011.

By Direction of the Secretary.

Vivian Drake,

Committee Management Officer.

[FR Doc. 2011–30610 Filed 11–28–11; 8:45 am]

BILLING CODE P

FEDERAL REGISTER

Vol. 76 Tuesday,
No. 229 November 29, 2011

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 162
Residential, Business, and Wind and Solar Resource Leases on Indian Land; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 162

[Docket ID BIA–2011–0001]

RIN 1076–AE73

Residential, Business, and Wind and Solar Resource Leases on Indian Land

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is proposing to revise the regulations addressing non-agricultural leasing of Indian land. This rule would add new subparts to address residential leases, business leases, wind resource evaluation and development leases, and solar resource development leases on Indian land, and would therefore remove the existing subpart for non-agricultural leases.

DATES: Comments on this proposed rule must be received by January 30, 2012. *Comments on the information collections contained in this proposed regulation are separate from those on the substance of the rule.* Comments on the information collection burden should be received by December 29, 2011 to ensure consideration, but must be received no later than January 30, 2012.

ADDRESSES: You may submit comments by any of the following methods:

Federal rulemaking portal: http://www.regulations.gov. The rule is listed under the agency name ''Bureau of Indian Affairs.'' The rule has been assigned Docket ID: BIA–2011–0001. If you would like to submit comments through the Federal e-Rulemaking Portal, go to *http://www.regulations.gov* and do the following. Go to the box entitled ''Enter Keyword or ID,'' type in ''BIA–2011–0001,'' and click the ''Search'' button. The next screen will display the Docket Search Results for the rulemaking. If you click on BIA–2011–0001, you can view this rule and submit a comment. You can also view any supporting material and any comments submitted by others.

—*Email: consultation@bia.gov.* Include the number 1076–AE73 in the subject line of the message.

—*Mail:* Del Laverdure, Principal Deputy Assistant Secretary—Indian Affairs, U.S. Department of the Interior, Mail Stop 4141, 1849 C Street NW., Washington, DC 20240. Include the number 1076–AE73 on the outer envelope.

—*Hand delivery:* Del Laverdure, Principal Deputy Assistant Secretary—Indian Affairs, U.S. Department of the Interior, Room 4141, 1849 C Street NW., Washington, DC 20240. Include the number 1076–AE73 on the outer envelope.

We cannot ensure that comments received after the close of the comment period (see **DATES**) will be included in the docket for this rulemaking and considered. Comments sent to an address other than those listed above will not be included in the docket for this rulemaking.

Comments on the information collections contained in this proposed regulation are separate from those on the substance of the rule. Send comments on the information collection burden to OMB by facsimile to (202) 395–5806 or email to the OMB Desk Officer for the Department of the Interior at *OIRA_DOCKET@omb.eop.gov.* Please send a copy of your comments to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

FOR FURTHER INFORMATION CONTACT: Elizabeth Appel, Office of Regulatory Affairs & Collaborative Action, (202) 273–4680; *Elizabeth.appel@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

This proposed rule would revise the current 25 CFR part 162, Leases and Permits, to establish subparts specifically addressing the following categories of leasing on Indian land: residential; business; wind resource evaluation and development; and solar resource development. Specifically, this rule would:

- Revise Subpart A, General Provisions
- Create a new Subpart C, Residential Leases
- Create a new Subpart D, Business Leases
- Create a new Subpart E, Wind Energy Evaluation Leases (WEELs) and Wind and Solar Resource (WSR) Leases
- Delete Subpart F, Non-agricultural Leases (because that subpart was intended to address residential and business leasing, which this proposed rule addresses specifically in subparts C and D, respectively)
- Move the current Subpart E, Special Requirements for Certain Indian Reservations, to Subpart F
- Create a new Subpart G, Records.

The proposed rule does not affect Subpart B, Agricultural Leases. Subpart B may be revised at a later time. In addition, to ensure that changes to the General Provisions do not affect agricultural lease regulations, the current General Provisions sections are being moved to Subpart B, where they apply only to agricultural leases. Minor edits were made to these General Provisions to delete redundancies and clarify that they now apply only to agricultural leases.

II. Summary of Substantive Revisions

This rule makes the procedures for leasing as explicit and transparent as possible. The consent requirements in the proposed regulations are consistent with the Indian Land Consolidation Act of 2000 (ILCA), as amended by the American Indian Probate Reform Act (AIPRA). Because this statute does not apply to tribes in Alaska, the consent requirements for Alaska remain the same as the previous regulations governing leasing. The proposed regulations provide procedures for approval of lease amendments, assignments, subleases and leasehold mortgages. The current regulations provide for the approval of such instruments, but do not specify the procedure for such approval, leading to the possibility of inconsistencies nationwide, to the detriment of lessees and lenders.

This rule provides that leases on tribal land may be approved for the compensation established in the lease. Leases for less than fair market rental may be approved on individually owned Indian land under certain circumstances.

Subpart C, Residential Leases, addresses leasing for single-family homes and housing for public purposes on Indian land. The proposed regulations provide for a 30-day time frame within which BIA must issue a decision on a complete residential lease application. Bonds are not required for leases for housing for public purposes and otherwise may be waived by BIA upon a determination that it is in the best interest of the landowner(s). Subpart C also includes provisions for enforcement of lease violations.

Subpart D, Business Leases, addresses leasing for business purposes, including: (1) Leases for residential purposes that are not covered in Subpart C; (2) leases for business purposes not covered by Subpart E (wind energy evaluation and wind and solar resource development); (3) leases for religious, educational, recreational, cultural, and other public purposes; and (4) commercial or industrial leases for retail, office, manufacturing, storage, biomass, waste-to-energy, and/or other business purposes. The proposed regulations provide for a 60-day time frame within which BIA must issue a

decision on a complete business lease application.

Subpart E, WEELs and WSR Leases, establishes procedures for obtaining BIA review and approval of wind energy evaluation leases (WEELs) and wind and solar resource (WSR) development leases. For wind energy, this proposed rule establishes a two-part process whereby developers obtain BIA approval of a short-term lease for possession of Indian land for the purposes of installation and maintenance of wind evaluation equipment, such as meteorological towers. The WEEL may provide the developer with an option to lease the Indian land for wind energy development purposes. The environmental reviews conducted for the short-term lease, which would only evaluate the impacts of the evaluation equipment, not the full development of the wind project, may be rolled into environmental reviews conducted for a lease for full development of the wind project. This two-part process is not necessary for solar resource development because solar evaluation does not require possession of the land.

Some of the more notable cross-cutting substantive changes include:

BIA Approval Process

- Eliminating the requirement for BIA approval of permits of Indian land;
- Eliminating the requirement for BIA approval of subleases and assignments where certain conditions are met;
- Imposing time limits on BIA to act on requests to approve lease amendments, lease assignments, subleases, and leasehold mortgages;
- Establishing that BIA has 30 days to act on a request to approve a lease amendment or sublease, or the document will be deemed approved;
- Establishing that BIA must approve amendments, assignments, leasehold mortgages, and subleases unless it finds a compelling reason not to, based on certain specified findings.

Compensation and Valuations

- Providing that BIA will defer to the tribe's negotiated value for a lease of tribal land and will not require valuation of tribal land;
- Allowing for waivers of valuation for residential leases of individually owned land if the individual landowners provide 100 percent consent and a waiver and BIA determines it is in the best interest of the landowners (100 percent consent is necessary because non-consenting owners receive fair market value, so a valuation will be necessary if any individual does not consent);
- Allowing short-term leases for wind resource evaluation purposes at the value negotiated by the Indian landowners (whether tribal or individual Indians);
- Allowing alternative forms of rental (other than monetary compensation) if BIA determines it is in the best interest of the Indian landowners;
- Allowing other types of valuation (other than appraisals) under certain circumstances;
- Allowing for automatic rental adjustments and restricting the need for reviews of the lease compensation (to determine if an adjustment is needed) to certain circumstances.

Improvements

- Requiring plans of development and schedules for construction of improvements to assist the BIA and Indian landowners in enforcement of diligent development of the leased premises.
- Clarifying that improvements on trust or restricted land are not taxable by States or localities, without regard to ownership. The purposes of residential, business, and WSR leasing on Indian land are to promote Indian housing and to allow Indian landowners to use their land profitably for economic development. These regulations are intended to preempt the field of leasing of Indian lands. The Federal statutory and regulatory scheme for leasing, including the regulation of improvements, is so pervasive as to preclude the additional burden of State taxation. The assessment of State taxes would obstruct Federal policies supporting tribal economic development and self-determination, and tribal interests in effective tribal government and economic self-sufficiency.

Direct Pay

- Allowing for direct pay only where there are 10 or fewer landowners, and all landowners consent to direct pay;
- Continuing direct pay unless and until 100 percent of the owners agree to discontinue direct pay, but suspending direct pay for any one Indian landowner who dies, is declared non compos mentis, or whose whereabouts become unknown.

These changes are intended to increase the efficiency and transparency of the BIA approval process for leasing of Indian land, support tribal decisions regarding the use of their land, increase flexibility in compensation and valuations, and facilitate management of direct pay.

III. Procedural Requirements

III. Procedural Requirements

A. Regulatory Planning and Review (E.O. 12866)

The Office of Management and Budget (OMB) has determined that this rule is significant under Executive Order 12866. This rule replaces provisions that apply to non-agricultural leasing of Indian land, generally, with provisions that apply specifically to the different types of non-agricultural leasing: Residential, business, and wind and solar resource leasing of Indian land. This rule describes how the BIA will administer residential, business, and wind and solar resource leases on trust and restricted land. Thus, the impact of the rule is confined to the Federal Government and individual Indian and tribal landowners and does not impose a compliance burden on the economy generally or create any inconsistencies or budgetary impacts to any other agency or Federal program.

(1) This rule will not have an annual effect of $100 million or more on the economy or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule makes changes to promote economic development on Indian land through, for example, providing greater transparency to procedures for obtaining BIA approval, imposing timelines on BIA to act on certain lease requests, and establishing that BIA will defer to tribes' negotiated values. The rule's changes will not have direct effects on the economy as a whole; however, the changes should result in increased leasing of Indian land, which will have a beneficial effect on tribal economies and communities.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency because the Department is the only agency with authority for approving leases on Indian land. We

have coordinated with the Department of Housing and Urban Development (HUD) to ensure that the leasing procedures will not impede Indian landowners' ability to obtain HUD-funding for residences.

(3) This rule does involve entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The revisions have no budgetary effects and do not affect the rights or obligations of any recipients.

(4) This rule may raise novel legal or policy issues because it alters established procedures for reviewing and approving leases of Indian land.

B. Regulatory Flexibility Act

The Department of the Interior certifies that this proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Small entities are not likely to enter into residential leases on Indian land because tribal housing authorities and tribal members usually enter into such leases. It is possible that small entities may enter into business leases or wind or solar resources leases but this rule does not impose any new requirements in obtaining or complying with a lease that would have a significant economic effect on those entities.

C. Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. It will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. The rule's requirements will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. The rule continues to require lessees to pay at least fair market rental, with certain exceptions, and adds that lessees agree to some other amount negotiated by the Indian tribe under certain circumstances. Nor will this rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of the U.S.-based enterprises to compete with foreign-based enterprises because the rule is limited to Indian land and is intended to promote economic development.

D. Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

E. Takings (E.O. 12630)

Under the criteria in Executive Order 12630, this rule does not affect individual property rights protected by the Fifth Amendment nor does it involve a compensable ''taking.'' A takings implication assessment is not required.

F. Federalism (E.O. 13132)

Under the criteria in Executive Order 13132, this rule has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rule governs leasing on Indian land, which is land held by the Federal Government in trust or restricted status for individual Indians or Indian tribes. Such land is subject to tribal law and Federal law, only, except in limited circumstances and areas where Congress or a Federal court has made State law applicable. This rule therefore does not affect the relationship between the Federal Government and States or among the various levels of government.

G. Civil Justice Reform (E.O. 12988)

This rule complies with the requirements of Executive Order 12988. Specifically, this rule has been reviewed to eliminate errors and ambiguity and written to minimize litigation; and is written in clear language and contains clear legal standards.

H. Consultation With Indian Tribes (E.O. 13175)

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments,'' Executive Order 13175 (59 FR 22951, November 6, 2000), and 512 DM 2, we have evaluated the potential effects on federally recognized Indian tribes and Indian trust assets. During the development of this proposed rule, the Department discussed the rule with tribal representatives at several consultation sessions. We distributed a preliminary draft of the rule to tribes in February 2011 and held three consultation sessions: Thursday, March 17, 2011 at the Reservation Economic Summit (RES) 2011 in Las Vegas; March 31, 2011 in Minnesota; and April 6, 2011, in Albuquerque, New Mexico. We requested that tribes submit written comments by April 18, 2011. We received written and oral comments from over 70 Indian tribes during tribal consultation. We reviewed each comment in depth and revised the rule accordingly. This proposed rule incorporates those revisions. We also compiled a summary of tribal comments received and our responses to those comments and are making that document available to tribes at: *http://www.bia.gov/WhoWeAre/AS-IA/Consultation/index.htm.* We plan to hold additional tribal consultation sessions, particularly in the geographic areas we were not able to reach prior to this proposed rule. We will announce the dates and locations of the additional tribal consultation sessions by letter to tribal leaders.

I. Paperwork Reduction Act

OMB Control No. 1076–0155 currently authorizes the collections of information contained in 25 CFR part 162, totaling an estimated 106,065 annual burden hours. If this proposed rule is finalized, the annual burden hours will increase by an estimated 2,910 hours. Because the sections where the information collections occur changes, we are including a table showing the section changes and whether a change to the information collection requirement associated with those sections has changed.

Current CFR cite	New CFR cite	Information collection requirement	Explanation of change
162.109, 162.204, 162.205	162.109, 162.204, 162.205, 162.338(e), 162.438(e), 162.528(d), 162.568(e).	Provide notice of tribal leasing laws, regulations, exemptions.	No change. Previously required, but now listed in specific subparts.
	162.320(a), 321(a), 162.420(a), 421(a), 162,546(a), 162.547(a).	Request for fair market rental/valuation on tribal land.	New.
	162.320(b), 321(b), 162.420(b), 421(b), 162,546(b), 162.547(b).	Request for waiver of fair market rental/valuation for individually owned land.	New.
	162.324, 162.424, 162.550	Agreement to suspend direct pay	New.
	162.368, 162.468, 162.593	Notification of good faith negotiations with holdover.	New.
162.207, 162.242–244, 162.604(a), 162.610.	162.009, 162.207, 162.242–244, 162. 345, 350, 353, 357, 162. 445, 450, 453, 457, 162. 530, 162.570, 574, 578, 582.	Submit lease, assignment, amendment, leasehold mortgage for approval.	No change. Previously required, but now listed in separate subparts.
162.213, 162.604(a)	162.024, 162.213, 162.338, 162.438, 162.528, 162.563.	Provide supporting documentation	No change. Previously required, but now listed in separate subparts.
	162.004	Submit permits to BIA for file	Permits must now be submitted to BIA for file.
162.217, 162.246	162.217, 162.246, 162.341, 162.441, 162.566.	Submit lease for recording	No change. Previously required, but now listed in separate subparts.
162.234, 162.604(c)	162.234, 162.334, 162.434, 162.525, 162.559.	Provide a bond	No change. Previously required, but now listed in separate subparts.
162.237, 162.604(d)	162.237, 162.337, 162.437, 162.527, 162.562.	Provide information for acceptable insurance.	No change. Previously required, but now listed in separate subparts.
162.241	162.241	Administrative fees	No change.
162.247, 162.613	162.247, 162.325, 329, 162.425, 429, 162.523, 551, 555.	Pay rent	No change. Previously required, but now listed in separate subparts.
162.248, 162.616	162.248, 162.365, 162.465, 162.590.	Pay penalties for late payment	No change. Previously required, but now listed in separate subparts.
162.212, 162.606	162.009, 162.212	Bidding on advertised lease	No change. Previously required, but now listed in separate subparts.
162.603	162.008(b)(2)	Use of minor's land	No change. Previously required, but now listed in separate subparts.
162.251, 162.618	162.251, 162.363, 162.463, 162.588.	Provide notice of curing violation	No change. Previously required, but now listed in separate subparts.
162.256, 162.623	162.256, 162.368, 162.468, 162.593.	Respond to notice of trespass	No change. Previously required, but now listed in separate subparts.
162.113	162.022, 162.113	Appealing decisions	No change. Previously required, but now listed in separate subparts.

The table showing the burden of the information collection is included below for your information.

BILLING CODE 4310–6W–P

CFR Cite	Description	Respondent Type	No. Respondents	Annual Responses	Burden Hours per Response	Total Annual Burden Hours
162.109, 162.204, 162.205, 162.338(e) 162.438(e) 162.528(d) 162.568(e)	Provide notice of tribal leasing laws, regulations, exemptions	Tribal	500	500	0.5	250
162.320(a), 321(a) 162.420(a), 421(a) 162,546(a), 162.547(a)	Request for fair market rental/valuation on tribal land	Tribal	50	50	0.5	25
162.320(b), 321(b) 162.420(b), 421(b) 162,546(b), 162.547(b)	Request for waiver of fair market rental/valuation for individually owned land	Individuals	5,000	5,000	0.5	2,500
162.324 162.424 162.550	Agreement to suspend direct pay.	Individuals	20	20	0.5	10
162.368 162.468 162.593	Notification of good faith negotiations with holdover.	Tribal	100	100	0.5	50
		Individuals	500	500	0.5	250
162.009 162.207, 242-244 162, 345, 350, 353, 357 162. 445, 450, 453, 457 162. 530, 570, 574, 578, 582	Submit lease, assignment, amendment, leasehold mortgage for approval	Individuals	10,000	10,000	1	10,000
		Businesses	2500	2500	1	2,500
		Tribal	2000	2000	1	2,000
162.024 162.213 162.338 162.438 162.528 162.563	Provide supporting documentation	Individuals	5,000	5,000	0.25	1,250
		Businesses	2,000	2,000	0.25	500
		Tribal	250	250	0.25	62.5
162.004	Submit permits to BIA for file	Individuals	100	100	0.25	25
		Businesses	100	100	0.25	25
		Tribal	100	100	0.25	25
162.217 162.246 162.341 162.441 162.566	Submit lease for recording	Individuals	10,000	10,000	0.5	5,000
		Businesses	2500	2500	0.5	1,250
		Tribal	2000	2000	0.5	1,000
162.234 162.334 162.434 162.525 162.559	Provide a bond	Individuals	10,000	10,000	0.5	5,000
		Businesses	2500	2500	0.5	1,250
		Tribal	2000	2000	0.5	1,000
162.237 162.337 162.437 162.527 162.562	Provide information for acceptable insurance	Individuals	10,000	10,000	0.25	2,500
		Businesses	2500	2500	0.25	625
		Tribal	2000	2000	0.25	500
162.241	Administrative fees	Individuals	10,000	10,000	2	20,000
		Businesses	2500	2500	2	5,000
		Tribal	2000	2000	2	4,000
162.247 162.325, 329 162.425, 429 162.523, 551, 555	Pay rent	Individuals	10,000	10,000	0.25	2,500
		Businesses	2500	2500	0.25	625
		Tribal	2000	2000	0.25	500

162.248 162.365 162.465 162.590	Pay penalties for late payment	Individuals	3,000	3,000	0.25	750
		Businesses	600	600	0.25	150
		Tribal	25	25	0.25	6
162.009 162.212	Bidding on advertised lease	Individuals	10,000	10,000	1	10,000
		Businesses	2500	2500	1	2,500
		Tribal	2000	2000	1	2,000
162.008(b)(2)	Use of a minor's land	All	7,250	7,250	3	21,750
162.251 162.363 162.463 162.588	Provide notice of curing violation	Individuals	100	100	0.5	50
		Businesses	45	45	0.5	23
162.256 162.368 162.468 162.593	Respond to notice of trespass	Individuals	100	100	0.5	50
		Businesses	45	45	0.5	23
162.022 162.113	Appealing decisions	Individuals	400	400	2	800
		Businesses	225	225	2	450
		Tribal	100	100	2	200
	Total		**14,500**	**127,110**		**108,975**

BILLING CODE 4310–6W–C

BIA invites comments on the information collection requirements in the proposed regulation. You may submit comments to OMB by facsimile to (202) 395–5806 or you may send an email to the attention of the OMB Desk Officer for the Department of the Interior: *OIRA_DOCKET@omb.eop.gov.* Please send a copy of your comments to the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. *Note that the request for comments on the rule and the request for comments on the information collection are separate.* To best ensure consideration of your comments on the information collection, we encourage you to submit them by December 29, 2011; while OMB has 60 days from the date of publication to act on the information collection request, OMB may choose to act on or after 30 days. Comments on the information collection should address: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology. Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

J. National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment because these are ''regulations * * * whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively or case-by-case.'' 43 CFR 46.210(j). No extraordinary circumstances exist that would require greater NEPA review.

K. Effects on the Energy Supply (E.O. 13211)

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

L. Clarity of This Regulation

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the ''COMMENTS'' section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you believe lists or tables would be useful, etc.

M. Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 25 CFR Part 162

Indians—lands.

For the reasons stated in the preamble, the Department of the Interior, Bureau of Indian Affairs, proposes to amend part 162 in Title 25 of the Code of Federal Regulations as follows:

PART 162—LEASES AND PERMITS

1. Revise the authority citation for part 162 to read as follows:

Authority: 5 U.S.C. 301, R.S. 463 and 465; 25 U.S.C. 2 and 9. Interpret or apply sec. 3, 26 Stat. 795, sec. 1, 28 Stat. 305, secs. 1, 2, 31 Stat. 229, 246, secs. 7, 12, 34 Stat. 545, 34 Stat. 1015, 1034, 35 Stat. 70, 95, 97, sec. 4, 36 Stat. 856, sec. 1, 39 Stat. 128, 41 Stat. 415, as amended, 751, 1232, sec. 17, 43 Stat. 636, 641, 44 Stat. 658, as amended, 894, 1365, as amended, 47 Stat. 1417, sec. 17, 48

Stat. 984, 988, 49 Stat. 115, 1135, sec. 55, 49 Stat. 781, sec. 3, 49 Stat. 1967, 54 Stat. 745, 1057, 60 Stat. 308, secs. 1, 2, 60 Stat. 962, sec. 5, 64 Stat. 46, secs. 1, 2, 4, 5, 6, 64 Stat. 470, 69 Stat. 539, 540, 72 Stat. 968, 107 Stat. 2011, 108 Stat. 4572, March 20, 1996, 110 Stat. 4016; 25 U.S.C. 380, 393, 393a, 394, 395, 397, 402, 402a, 403, 403a, 403b, 403c, 409a, 413, 415, 415a, 415b, 415c, 415d, 477, 635, 2201 *et seq.,* 3701, 3702, 3703, 3712, 3713, 3714, 3715, 3731, 3733, 4211; 44 U.S.C. 3101 *et seq.*

§ 162.100 [Removed]

2. Remove § 162.100.

§§ 162.101.162.113 [Redesignated]

3. Redesignate § 162.101–§ 162.113 in subpart A as § 162.101–§ 162.113 in subpart B.

4. Revise subpart A to read as follows:

PART 162—LEASES AND PERMITS

Subpart A—General Provisions

Purpose, Definitions, and Scope

Sec.

When to Get a Lease

How to Get a Lease

Lease Administration

Subpart A—General Provisions

Purpose, Definitions, and Scope

§ 162.001 What is the purpose of this part?

This part identifies:

(a) Conditions and authorities under which we will approve leases of Indian land and may issue permits on Government land;

(b) How to obtain leases;

(c) Terms and conditions required in leases;

(d) How we administer and enforce leases; and

(e) Special requirements for leases made under special acts of Congress that apply only to certain Indian reservations.

§ 162.002 How is this part subdivided?

(a) This part includes multiple subparts relating to:

(1) General Provisions (Subpart A);

(2) Agricultural Leases (Subpart B);

(3) Residential Leases (Subpart C);

(4) Business Leases (Subpart D);

(5) Wind Energy Evaluation, Wind Resource, and Solar Resource Leases (Subpart E);

(6) Special Requirements for Certain Reservations (Subpart F);

(7) Records (Subpart G).

(b) Subpart F identifies special provisions applicable only to leases made under special acts of Congress that apply only to certain Indian reservations. Leases covered by Subpart F are also subject to the provisions in subparts A through G, except to the extent that subparts A through G are inconsistent with the provisions in subpart F or any act of Congress under which the lease is made.

(c) Leases covered by Subpart B are not subject to the provisions in subpart A. Leases covered by subpart B are subject to the provisions in subpart G, except that if a provision in subpart B conflicts with a provision of subpart G, then the provision in subpart B will govern.

§ 162.003 What key terms do I need to know?

Adult means a person who is 18 years of age or older.

Appeal bond means a bond posted upon filing of an appeal that provides a security or guaranty if an appeal creates a delay in implementing a BIA decision that could cause a significant and measurable financial loss to another party.

Approval means written authorization by the Secretary or a delegated official or, where applicable, the ''deemed approved'' authorization of an amendment or sublease.

Assignment means an agreement between a lessee and an assignee, whereby the assignee acquires all or some of the lessee's rights, and assumes all or some of the lessee's obligations, under a lease.

BIA means the Secretary of the Interior or the Bureau of Indian Affairs within the Department of the Interior and any tribe acting on behalf of the Secretary or Bureau of Indian Affairs under § 162.015, except that this term means only the Secretary of the Interior or Bureau of Indian Affairs if the function is an inherently Federal function.

Business day means Monday through Friday, excluding federally recognized holidays and other days that the applicable office of the Federal Government is closed to the public.

Consent or consenting means written authorization by an Indian landowner to a specified action.

Constructive notice means:

(1) Public notice posted at the tribal government office, tribal community building, and/or the United States Post Office; and

(2) Notice published in the local newspaper(s) nearest to the affected land and/or announced on a local radio station(s).

Court of competent jurisdiction means a Federal, tribal, or State court with jurisdiction.

Day means a calendar day, unless otherwise specified.

Emancipated minor means a person less than 18 years of age who is married or who is determined by a court of competent jurisdiction to be legally able to care for himself or herself.

Equipment installation plan means a plan that describes the type and location of any improvements to be installed by the lessee to evaluate the resources and a schedule showing the tentative commencement and completion dates for installation of those improvements.

Fair market rental means the amount of rental income that a leased tract of Indian land would most probably command in an open and competitive market, or as determined by competitive bidding.

Fee interest means an interest in land that is owned in unrestricted fee status, and is thus freely alienable by the fee owner.

Fractionated tract means a tract of Indian land owned in common by Indian landowners and/or fee owners holding undivided interests therein.

Government land means any tract, or interest therein, in which the surface estate is owned and administered by the United States, not including tribal land that has been reserved for administrative purposes.

Holdover means circumstances in which a lessee remains in possession of the leased premises after the lease term expires.

Housing for public purposes means multi-family developments and single-family residential developments (i) administered by a tribe, Tribally-Designated Housing Entity, or a tribally-sponsored or tribally sanctioned not-for-profit entity; or (ii) substantially financed using a tribal, Federal, or State housing assistance program or not-for profit entity.

Immediate family means a spouse, brother, sister, aunt, uncle, niece, nephew, first cousin, lineal ancestor, lineal descendant, or member of the household.

Improvements means buildings, other structures, and associated infrastructure constructed or installed under a lease to serve the purposes of the lease.

Indian means:

(1) Any person who is a member of any Indian tribe, is eligible to become a member of any Indian tribe, or is an owner as of October 27, 2004, of a trust or restricted interest in land;

(2) Any person meeting the definition of Indian under the Indian Reorganization Act (25 U.S.C. 479) and the regulations promulgated thereunder; and

(3) With respect to the inheritance and ownership of trust or restricted land in the State of California pursuant to 25 U.S.C. 2206, any person described in paragraph (1) or (2) or any person who owns a trust or restricted interest in a parcel of such land in that State.

Indian land means any tract in which any interest in the surface estate is owned by a tribe or individual Indian in trust or restricted status and includes both individually owned Indian land and tribal land.

Indian landowner means a tribe or individual Indian who owns an interest in Indian land.

Individually owned Indian land means any tract, or interest therein, in which the surface estate is owned by an individual Indian in trust or restricted status.

Indian tribe means an Indian tribe under section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 479a).

Interest, when used with respect to Indian land, means an ownership right to the surface estate of Indian land.

Lease means a written contract between Indian landowners and a lessee, whereby the lessee is granted a right to possession of Indian land, for a specified purpose and duration.

Leasehold mortgage means a mortgage, deed of trust, or other instrument that pledges a lessee's leasehold interest as security for a debt or other obligation owed by the lessee to a lender or other mortgagee.

Lessee means person or entity who has acquired a legal right of possession to Indian land by a lease under this part.

Life estate means an interest in property held only for the duration of a designated person's life. A life estate may be created by a conveyance document or by operation of law.

LTRO means the Land Titles and Records Office of the BIA.

Mail means mailing by U.S. Postal Service or commercial delivery service.

Minor means an individual who is less than 18 years of age.

Nominal rental or nominal compensation means a rental amount that is so insignificant that it bears no relationship to the value of the property that is being leased.

Non compos mentis means a person who has been legally determined by a court of competent jurisdiction to be of unsound mind or incapable of managing his or her own affairs.

Notice of violation means a letter notifying the lessee of a violation of the lease and providing the lessee with a specified period of time to show cause why the lease should not be cancelled for the violation. A 10-day show cause letter is one type of notice of violation.

Orphaned minor means a minor who does not have one or more guardians duly appointed by a court of competent jurisdiction.

Performance bond means security for the performance of certain lease obligations, as furnished by the lessee, or a guaranty of such performance as furnished by a third-party surety.

Permit means a written, non-assignable agreement between Indian landowners or BIA and the permittee, whereby the permittee is granted a temporary, revocable privilege to use Indian land or Government land, for a specified purpose.

Permittee means a person or entity who has acquired a legal right of use to Indian land or Government land by a permit.

Power of attorney means an authority by which one person enables another to act for him/her as attorney in fact.

Remainder interest means an interest in Indian land that is created at the same time as a life estate, for the use and enjoyment of its owner after the life estate terminates.

Restoration and reclamation plan means a plan that defines the reclamation, revegetation, restoration, and soil stabilization requirements for the project area, and requires the expeditious reclamation of construction areas and revegetation of disturbed areas to reduce invasive plant infestation and erosion.

Secretary means the Secretary of the Interior.

Single-family residence means a building with one to four dwelling units on a tract of land under a single residential lease, or as defined by tribal zoning law or other tribal authorization.

Single-family residential development means one or more single-family residences owned, managed, or developed by a single entity.

Sublease means a written agreement by which the lessee grants to an individual or entity a right to possession less than that held by the lessee under the lease.

Surety means one who guarantees the performance of another.

Trespass means any unauthorized occupancy, use of, or action on any Indian land or Government land.

Tribal authorization means a duly adopted tribal resolution, tribal ordinance, or other appropriate tribal document authorizing the specified action.

Tribally Designated Housing Entity means a tribally designated housing entity under 25 U.S.C. 4103(21).

Tribal land means the surface estate of lands or any interest therein, title to which is held by the United States in trust for one or more tribes, or title to which is held by one or more tribes subject to Federal restrictions against alienation or encumbrance, and includes such lands reserved for BIA administrative purposes. The term also includes the surface estate of lands held by the United States in trust for an Indian corporation chartered under section 17 of the Act of June 18, 1934 (48 Stat. 988; 25 U.S.C. 477).

Tribal law means the body of non-Federal law that governs lands and activities under the jurisdiction of a tribe, including ordinances or other enactments by the tribe, and tribal court rulings.

Tribal land assignment means a contract or agreement that conveys to tribal members any rights for the temporary use of tribal lands, assigned by an Indian tribe in accordance with tribal laws or customs.

Trust or restricted land or *trust or restricted status* means any tract, or interest therein, that the United States

holds in trust for the benefit of one or more tribes or individual Indians, or any tract, or interest therein, that one or more tribes or individual Indians holds title to, but can only alienate or encumber with the approval of the United States because of limitations contained in the conveyance instrument pursuant to Federal law or limitations contained in Federal law.

Undivided interest means a fractional share in the surface estate of Indian land, where the surface estate is owned in common with other Indian landowners or fee owners.

Us/we/our means the Secretary or the Bureau of Indian Affairs (BIA) and any tribe acting on behalf of the Secretary or BIA under § 162.015, except that this term means only the Secretary or BIA if the function is an inherently Federal function.

Uniform Standards of Professional Appraisal Practice (USPAP) means the standards promulgated by the Appraisal Standards Board of the Appraisal Foundation to establish requirements and procedures for professional real property appraisal practice.

Violation means a failure to take an action, including payment of compensation, when required by the lease, or to otherwise not comply with a term of the lease. This definition applies for purposes of this part no matter how ''violation'' or ''default'' is defined in the lease.

§ 162.004 May BIA approve or grant permits under this part?

(a) Permits for the use of Indian land do not require our approval; however, you must fulfill the following requirements:

(1) Ensure that permitted activities comply with all applicable environmental and cultural resource laws; and

(2) Submit all permits to the appropriate BIA office for us to confirm that the document meets the definition of ''permit'' and does not grant an interest in Indian land and allow us to maintain a copy of the permit in our records.

(b) The following table provides characteristics of permits versus leases.

Permit	Lease
Does not grant a legal interest in Indian land.	Grants a legal interest in Indian land.
Shorter term	Longer term.
Limited use	Broader use with associated infrastructure.
Subject to unlimited access by others.	Lessee has right of possession, ability to limit or prohibit access by others.
Indian landowner may terminate at any time.	Indian landowner may terminate under limited circumstances.

(c) We may grant permits for the use of Government land. The leasing regulations in this part will apply to such permits, as appropriate.

When to Get a Lease

§ 162.005 When does this part apply?

(a) This part applies to all leases, amendments, assignments, subleases, and leasehold mortgages submitted to BIA for approval after [INSERT FINAL RULE EFFECTIVE DATE].

(b) If the terms of a lease document approved by BIA prior to [INSERT FINAL RULE EFFECTIVE DATE] conflict with this part, the terms of the lease document govern.

(c) We may amend this part at any time.

§ 162.006 To what land does this part apply?

(a) This part applies to Indian land and Government land, including any tract in which an individual Indian or tribe owns an interest in trust or restricted status.

(1) We will not lease fee interests or collect rent on behalf of fee interest owners. We will not condition our approval of a lease of the trust and restricted interests on a lease having been obtained from the owners of any fee interests.

(2) We will not include the fee interests in a tract in calculating the applicable percentage of interests required for consent to a lease document.

(b) This paragraph applies if there is a life estate on the land to be leased.

(1) When all of the trust or restricted interests in a tract are subject to a life estate, the life tenant may lease the land without our approval, for the duration of the life estate. The following conditions apply:

(i) Such a lease must be recorded;

(ii) The lessee must pay rent directly to the life tenant under the terms of the lease;

(iii) We may monitor the use of the land on behalf of the owners of the remainder interests, as appropriate, but will not be responsible for enforcing the lease on behalf of the life tenant.

(iv) We will not lease the remainder interests or join in a lease by the life tenant on behalf of the owners of the remainder interests except as needed to preserve the value of the land;

(v) We will not lease on the life tenant's behalf, but we may collect rents on behalf of the life tenant; and

(vi) We will be responsible for enforcing the terms of the lease on behalf of the owners of the remainder interests.

(2) When less than all of the trust or restricted interests in a tract are subject to a life estate, the life tenant may not lease the land unless the remainder interests are also leased. The following conditions apply:

(i) We will not lease on the life tenant's behalf, but we may collect rents on behalf of the life tenant; and

(ii) We will be responsible for enforcing the terms of the lease on behalf of the owners of the remainder interests.

(3) Rent payable under the lease will be paid to the life tenant in accordance with Part 179 of this chapter, unless the document creating the life estate provides otherwise.

(4) All leases entered into by life tenants must be recorded in our Land Titles and Records Office, even where our approval is not required.

§ 162.007 To what types of land use agreements does this part not apply?

(a) This part does not apply to the following types of land use agreements:

This part does not apply to . . .	which are covered by . . .
Mineral leases, prospecting permits, or mineral development agreements.	25 CFR parts 211, 212 and 225.
Grazing permits	25 CFR part 166.
Timber contracts	25 CFR part 163.
Contracts or agreements that encumber tribal land.	25 U.S.C. 81.
Rights-of-way	25 CFR part 169.
Tribal land assignments and similar instruments authorizing temporary uses.	tribal laws.
Traders' licenses	25 CFR part 140.

(b) This part does not apply to leases of water rights associated with Indian land, except to the extent the use of such water rights is incorporated in a lease of the land itself.

§ 162.008 When do I need a lease to authorize possession of Indian land?

(a) You need a lease under this part to possess Indian land if you meet one of the criteria in the following table.

If you are . . .	then you must obtain a lease under this part . . .
(1) A person or legal entity (including an independent legal entity owned and operated by a tribe) who is not an owner of the Indian land.	from the owners of the land before taking possession of the land or any portion thereof.
(2) An Indian landowner of a fractional interest in the land	from the owners of other trust and restricted interests in the land, unless those owners have given you permission to take or continue in possession without a lease.

(b) You do not need a lease to possess Indian land if you meet any of the criteria in the following table.

You do not need a lease if you are . . .	but the following conditions apply . . .
(1) An Indian landowner who owns 100 percent of the trust or restricted interests in a tract.	(1) We may require you to provide evidence of a direct benefit to the minor child; and (2) When the child is no longer a minor, you must obtain a lease to authorize continued possession.
(2) A parent or guardian of a minor child who owns 100 percent of the trust interests in the land.	
(3) A 25 U.S.C. 477 corporate entity that holds the Indian land directly under its Federal charter (not pursuant to a lease from the Indian tribe).	You must record documents in accordance with § 162.341, § 162.441, and § 162.566.
(4) A person or legal entity that is leasing Indian land under a special act of Congress authorizing leases without our approval.	You must record documents in accordance with § 162.341, § 162.441, and § 162.566.

(c) Landowners who enter into an agreement under paragraph (a)(2) may wish to consider documenting such an agreement and recording it in the LTRO.

How to Get a Lease

§ 162.009 How do I obtain a lease?

(a) This section establishes the basic steps to obtain a lease.

(1) Prospective lessees must:

(i) Directly negotiate with Indian landowners for a lease; and

(ii) Notify all Indian landowners and obtain the consent of the Indian landowners of the applicable percentage of interests, for fractionated tracts; and

(2) Prospective lessees and Indian landowners must:

(i) Prepare the required information and analyses, including information to facilitate BIA's analysis under applicable environmental and cultural resource requirements; and

(ii) Ensure the lease complies with the requirements in subpart B for agricultural leases, subpart C for residential leases, subpart D for business leases, and subpart E for wind energy evaluation, wind resource, or solar resource leases; and

(3) Prospective lessees and/or Indian landowners must submit the lease, and required information and analyses, to the BIA office with jurisdiction over the lands covered by the lease for our review and approval.

(b) Generally, residential, business, wind energy evaluation, wind resource, and solar resource leases will not be advertised for competitive bid.

§ 162.010 How does a prospective lessee identify and contact Indian landowners to negotiate a lease?

(a) Prospective lessees may submit a written request to us to obtain the following information for the purpose of negotiating a lease:

(1) Names and addresses of the Indian landowners or their representatives;

(2) Information on the location of the parcel; and

(3) The percentage of undivided interest owned by each Indian landowner.

(b) We may assist prospective lessees in contacting the Indian landowners or their representatives for the purpose of negotiating a lease, upon request.

(c) We will assist the Indian landowners in those negotiations, upon their request.

§ 162.011 What are the consent requirements for a lease?

(a) For fractionated tracts:

(1) Except in Alaska, the owners of the following percentage of undivided trust or restricted interests in a fractionated tract of Indian land must consent to a lease of that tract:

If the number of owners of the undivided trust or restricted interest in the tract is	Then the required percentage of the undivided trust or restricted interest is
(i) One to five	90 percent;
(ii) Six to 10	80 percent;
(iii) 11 to 19	60 percent;
(iv) 20 or more	Over 50 percent.

(2) Leases in Alaska require consent of all of the Indian landowners in the tract.

(3) If the prospective lessee is also an Indian landowner, their consent will be included in the percentages in paragraphs (a)(1) and (a)(2).

(4) Where owners of the applicable percentages in paragraph (a)(1) consent to a lease document:

(i) That lease document binds all non-consenting owners to the same extent as if those owners also consented to the lease document.

(ii) That lease document will not bind a non-consenting Indian tribe, except with respect to the tribally owned fractional interest, and the non-consenting Indian tribe will not be treated as a party to the lease. Nothing in this paragraph shall be construed to affect the sovereignty or sovereign immunity of the Indian tribe.

(5) We will determine the number of owners of, and undivided interests in, a fractionated tract of Indian land, for the purposes of calculating the percentages in paragraph (a)(1) based on our records on the date on which the lease is submitted to us for approval.

(b) Tribal land subject to a tribal land assignment may only be leased with the consent of the tribe.

§ 162.012 Who is authorized to consent to a lease?

(a) Indian tribes, adult Indian landowners, or emancipated minors, may consent to a lease of their land, including undivided interests in fractionated tracts.

(b) The following individuals or entities may consent on behalf of an individual Indian landowner:

(1) An adult with legal custody acting on behalf of his or her minor children;

(2) A guardian, conservator, or other fiduciary appointed by a court of

competent jurisdiction recognized to act on behalf of an individual Indian landowner;

(3) Any person who is authorized to practice before the Department of the Interior under 43 CFR part 1 and has been retained by the Indian landowner;

(4) BIA, under the circumstances in paragraph (c) of this section; or

(5) An adult or legal entity who has been given a written power of attorney that:

(i) Meets all of the formal requirements of any applicable law under § 162.013; and

(ii) Identifies the attorney-in-fact; and

(iii) Describes the scope of the powers granted, to include leasing land, and any limits on those powers.

(c) BIA may give written consent to a lease, and that consent must be counted in the percentage ownership described in § 162.011, on behalf of:

(1) The individual owner if the owner is deceased and the heirs to, or devisees of, the interest of the deceased owner have not been determined;

(2) Individuals whose whereabouts are unknown to us, after we make a reasonable attempt to locate such individuals;

(3) Individuals who are found to be non compos mentis, or determined to be an adult in need of assistance or under legal disability as defined in part 115 of this chapter;

(4) Orphaned minors who do not have guardians duly appointed by a court of competent jurisdiction;

(5) Individuals who have given us a written power of attorney to lease their land; or

(6) The individual Indian landowners of a fractionated tract where:

(i) We have given the Indian landowners written notice of our intent to consent to a lease on their behalf;

(ii) The Indian landowners are unable to agree upon a lease during a three month negotiation period following the notice; and

(iii) The land is not being used by an Indian landowner under § 162.008(b)(1).

Lease Administration

§ 162.013 What laws will apply to leases approved under this part?

(a) In addition to the regulations in this part, leases approved under this part are subject to:

(1) Applicable Federal laws and any specific Federal statutory requirements that are not incorporated in this part;

(2) Tribal law, subject to paragraph (b) of this section; and

(3) State law, in the specific areas and circumstances in Indian country where Congress or a Federal court has made it expressly applicable.

(b) If any regulation in this part conflicts with a tribal law, the Secretary may waive the application of such regulation to tribal land, unless the waiver would:

(1) Violate a Federal statute or judicial decision; or

(2) Conflict with the United States' trust responsibility under Federal law.

(c) The parties to a specific lease may subject it to State or local law in the absence of Federal or tribal law, if:

(1) The lease includes a provision to this effect; and

(2) The Indian landowners expressly agree to the application of State or local law.

(d) An agreement under paragraph (c) of this section does not waive a tribe's sovereign immunity unless the tribe expressly states its intention to waive sovereign immunity in the lease of tribal land.

§ 162.014 Will BIA comply with tribal laws in making decisions regarding leases?

Unless contrary to Federal law, BIA will comply with tribal laws in making decisions regarding leases, including tribal laws regulating activities on leased land under tribal jurisdiction, including, but not limited to, tribal laws relating to land use, environmental protection, and historic or cultural preservation.

§ 162.015 May tribes administer this part on BIA's behalf?

A tribe or tribal organization may contract or compact under the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450f *et seq.*) to administer any portion of this part that is not an inherent Federal function.

§ 162.016 May a lease address access to the leased premises by roads or other infrastructure?

A lease may address access to the leased premises by roads or other infrastructure, as long as the access complies with applicable statutory and regulatory requirements, including 25 CFR part 169.

§ 162.017 May a lease combine tracts with different Indian landowners?

(a) We may approve a lease that combines multiple tracts of Indian land into a unit, if we determine that unitization is:

(1) In the Indian landowners' best interest; and

(2) Consistent with the efficient administration of the land.

(b) For a lease that covers multiple tracts, the minimum consent requirements apply to each tract separately.

(c) Unless the lease provides otherwise, the rent or other compensation will be prorated in proportion to each tract acreage contribution to the entire lease. Once prorated per tract, the rent will be distributed to the owners of each tract based upon their respective percentage interest in that particular tract.

§ 162.018 What are BIA's responsibilities in approving leases?

(a) We will work to provide assistance to Indian landowners in leasing their land, either through negotiations or advertisement.

(b) We will promote tribal control and self-determination over tribal land and other land under the tribe's jurisdiction, including through contracts and self-governance compacts entered into under the Indian Self-Determination and Education Assistance Act, as amended, 25 U.S.C. 450f *et. seq.*

(c) We will promptly respond to requests for BIA approval of leases, as specified in § 162.339, § 162.439, § 162.529, and § 162.564.

(d) We will work to ensure that the use of the land is consistent with the Indian landowners' wishes.

§ 162.019 What are BIA's responsibilities in administering and enforcing leases?

(a) Upon notification from the Indian landowner that the lessee has failed to comply with the terms and conditions of the lease, we will promptly take appropriate action, as specified in § 162.362, § 162.462, and § 162.587.

(b) We will promptly respond to requests for BIA approval of amendments, assignments, leasehold mortgages, and subleases, as specified in subparts B, C, D, and E.

(c) We will respond to Indian landowners' concerns regarding the management of their land.

(d) We will take emergency action as needed to preserve the value of the land.

§ 162.020 What may BIA do if an individual or entity takes possession of or uses Indian land without an approved lease or other proper authorization?

If an individual or entity takes possession of, or uses, Indian land without a lease and a lease is required, the unauthorized possession or use is a trespass. We may take action to recover possession on behalf of the Indian landowners and pursue any additional remedies available under applicable law. The Indian landowner may pursue any available remedies under tribal law.

§ 162.021 May BIA take emergency action if Indian land is threatened?

(a) We may take appropriate emergency action if there is a natural disaster or if an individual or entity causes or threatens to cause immediate

and significant harm to Indian land. Emergency action may include judicial action seeking immediate cessation of the activity resulting in or threatening the harm.

(b) We will make reasonable efforts to notify the Indian landowners before and after taking emergency action. In all cases, we will notify the Indian landowners after taking emergency action by constructive notice.

§ 162.022 May decisions under this part be appealed?

Appeals from BIA decisions under this part may be taken pursuant to part 2 of this chapter, except where otherwise provided in this part. For purposes of appeals from BIA decisions under this part, ''interested party'' is defined as any person whose own direct economic interest is adversely affected by an action or decision.

§ 162.023 Who may I contact with questions concerning the leasing process?

The Indian landowner or prospective lessee may contact the local BIA realty office with jurisdiction over the land for answers to questions about the leasing process.

§ 162.024 What documentation may BIA require in approving, administering, and enforcing leases?

(a) We may require that the parties provide any pertinent environmental and technical records, reports, and other information (*e.g.,* records of lease payments), related to approval, administration, and enforcement of leases.

(b) We will adopt environmental assessments and environmental impact statements prepared by another Federal agency, entity, or person under 43 CFR 46.320 and 42 CFR 1506.3, but may require a supplement. We shall use any reasonable evidence that another Federal agency has accepted the environmental report, including but not limited to, letters of approval or acceptance.

(c) Upon our request, the parties must make appropriate records, reports, or information available for our inspection and duplication. We will keep confidential any such information that is marked confidential or proprietary and is exempt from public release, to the extent allowed by law. Failure to cooperate with such request, provide data, or grant access to information or records, may, at our discretion, be treated as a lease violation. All approved leases must include such disclosure provisions.

5. In § 162.101, revise the section heading and the introductory language to read as follows:

§ 162.101 What key terms do I need to know for this subpart?

For the purposes of this subpart:

* * * * *

§§ 162.102–162.104 [Removed]

6. Remove § 162.102–§ 162.104.

§§ 162.105 and 162.106 [Amended]

7. In § 162.105 and § 162.106, remove the word ''lease'' and add in its place the words ''agricultural lease'' and remove the word ''leasing'' and add in its place the words ''agricultural leasing'' wherever they appear.

8. In § 162.107, revise the section heading and the introductory language in paragraph (a) to read as follows:

§ 162.107 What are BIA's objectives in granting and approving agricultural leases?

(a) We will assist Indian landowners in leasing their land for agricultural purposes. For the purposes of §§ 162.102 through 162.256:

* * * * *

§§ 162.108–162.110 [Amended]

9. In § 162.108–§ 162.110 remove the word ''lease'' wherever it appears and add in its place the words ''agricultural lease''.

10. In § 162.111, revise the section heading, the introductory language in paragraph (a), and paragraph (b) to read as follows:

§ 162.111 Who owns the records associated with this subpart?

(a) Records associated with this subpart are the property of the United States if they:

* * * * *

(b) Records associated with this subpart not covered by paragraph (a) of this section that are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this subpart are the property of the tribe.

11. Revise the heading of § 162.112 to read as follows:

§ 162.112 How must records associated with this part be preserved?

§ 162.113 [Amended]

12. In § 162.113 remove the word ''part'' wherever it appears and add in its place the word ''subpart''.

13. Add new subparts C through D to read as follows:

Subpart C—Residential Leases

Residential Leasing General Provisions

Sec.

Lease Requirements

Rental Requirements

Bonding and Insurance

Approval

Amendments

Subpart C—Residential Leases

Residential Leasing General Provisions

§ 162.301 What types of leases does this subpart cover?

(a) This subpart covers both ground leases (undeveloped land) and leases of developed land (together with the improvements thereon) on Indian land, for housing purposes. Leases covered by this subpart would authorize the construction or use of:

(1) A single-family residence; and

(2) Housing for public purposes.

(b) Leases for other residential development (for example, single-family residential developments that are not housing for public purposes and multi-family developments) are covered under subpart D of this part.

§ 162.302 Is there a model residential lease form?

We will make available one or more model lease forms that satisfy the formal requirements of this part, including, as appropriate, the model tribal lease form jointly developed by BIA, the Department of Housing and Urban Development, the Department of Veterans' Affairs, and the Department of Agriculture. Use of a model lease form is not mandatory, provided all requirements of this part are met. If a model lease form is not used, we will assist the Indian landowners in drafting lease provisions or in using tribal lease forms that conform to the requirements of this part.

Lease Requirements

§ 162.311 How long may the term of a residential lease run?

(a) A residential lease must provide for a definite lease term, state if there is an option to renew and, if so, provide for a definite term for the renewal period.

(b) Unless otherwise provided by paragraphs (b)(1) or (b)(2) of this section, the maximum term may not exceed 50 years. The lease may provide for a primary term of less than 50 years with a provision for one or more renewals, so long as the maximum term, including all renewals, does not exceed 50 years.

(1) If a Federal statute provides for a longer maximum term (*e.g.,* 25 U.S.C. 415(a) allows for a maximum term of 99 years for certain tribes), the lease may provide for a primary term, and one renewal not to exceed 25 years, so long as the maximum term, including the renewal, does not exceed the maximum term established by statute.

(2) Where all of the trust or restricted interests in a tract are owned by a deceased Indian whose heirs and devisees have not yet been determined, the maximum term may not exceed two years.

(c) A residential lease may not be extended by holdover.

§ 162.312 What must the lease include if it contains an option to renew?

(a) If the lease provides for an option to renew, the lease must specify:

(1) The time and manner in which the option must be exercised or is automatically effective;

(2) That confirmation of the renewal will be submitted to us;

(3) Whether landowner consent to the renewal is required;

(4) That the lessee must provide notice to the Indian landowner and any mortgagees of the renewal;

(5) The additional consideration, if any, that will be due upon the exercise of the option to renew or the commencement of the renewal term;

(6) That any change in the terms of the lease will be considered an amendment subject to consent and BIA approval requirements pursuant to §§ 162.343 through 162.346; and

(7) Any other conditions for renewal (*e.g.,* the lessee may not be in violation of the lease at the time of renewal).

(b) We must record any renewal of a lease in the Land Titles and Records Office.

§ 162.313 Are there mandatory provisions that a residential lease must contain?

(a) All residential leases must identify:

(1) The tract or parcel of land being leased;

(2) The purpose of the lease and authorized uses of the leased premises;

(3) The parties to the lease;

(4) The term of the lease;

(5) The owner being represented and the authority under which such action is being taken, where one executes a lease in a representative capacity;

(6) The citation of the statute that authorizes our approval;

(7) Who is responsible for constructing, owning, operating, maintaining, and managing improvements;

(8) Payment requirements and late payment charges, including interest;

(9) Insurance requirements under § 162.337; and

(10) Bonding requirements under § 162.334. If a performance bond is required, the lease must state that the lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities.

(b) All residential leases must include the following provisions:

(1) The obligations of the lessee and its sureties to the Indian landowners are also enforceable by the United States, so long as the land remains in trust or restricted status;

(2) Nothing in the lease would prevent or delay termination of Federal trust responsibilities for the land during the lease's term;

(3) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;

(4) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under § 162.013;

(5) The lessee indemnifies and holds the United States and the Indian landowners harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises (this provision is not mandatory if the lessee would be prohibited by law from making such an agreement);

(6) The lessee indemnifies the United States and the Indian landowners against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, unless the liability or cost arises from the gross negligence or willful misconduct of the Indian landowner (this provision is not mandatory if the lessee would be prohibited by law from making such an agreement);

(7) In the event that historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the lessee will contact BIA and the tribe that has jurisdiction to determine how to proceed and appropriate disposition;

(8) BIA has the right, at any reasonable time during the term of the lease and upon reasonable notice, to enter upon the leased premises for inspection and compliance; and

(9) Unless otherwise indicated, this is a lease of the trust and restricted interests in the property described and is not a lease of any undivided fee interests. All rental payments by the

lessee will be distributed to the trust and restricted landowners and life estate holders on trust and restricted land only. The lessee will be responsible for accounting to the owners of any fee interests that may exist in the property being leased.

(c) We may treat any provision of a lease, sublease, amendment, assignment, or leasehold mortgage that is in violation of Federal law as a violation of the lease.

§ 162.314 May improvements be made under a residential lease?

(a) The lessee may construct improvements under a residential lease if the residential lease authorizes the construction and generally describes the type and location of the improvements to be constructed during the lease term.

(b) The lessee must provide reasonable notice to the Indian landowners of the construction of any major improvements not generally described in the lease. We will treat any attempt by the lessee to construct major improvements, without the necessary notice, as a lease violation.

§ 162.315 How must a residential lease address ownership of improvements?

(a) A residential lease must specify who will own any improvements the lessee constructs during the lease term. In addition, the lease must indicate whether each specific improvement the lessee constructs will, upon the expiration or termination of the lease:

(1) Remain on the leased premises, in a condition satisfactory to the Indian landowners and become the property of the Indian landowner;

(2) Be removed immediately or within a time period specified in the lease, at the lessee's expense, with the leased premises to be restored as close as possible to their condition before construction of such improvements; or

(3) Be disposed of by other means.

(b) A lease that requires the lessee to remove the improvements must also provide the Indian landowners with an option to take possession of and title to the improvements if the improvements are not removed within the specified time period.

(c) Any permanent improvements on the leased land shall be subject to 25 CFR 1.4 and, in addition, shall not be subject to any fee, tax, assessment, levy, or other such charge imposed by any State or political subdivision of a State, without regard to ownership of those improvements. Improvements may be subject to taxation by the Indian tribe with jurisdiction.

§ 162.316 How will BIA enforce removal requirements in a residential lease?

We may take appropriate enforcement action in consultation with the tribe for tribal land or, where feasible, with Indian landowners for individually owned Indian land, to ensure removal of the improvements or restoration of the premises at the lessee's expense. We may take such enforcement action after termination or expiration of the lease. We may collect and hold the performance bond until removal and restoration are completed.

§ 162.317 How must a residential lease describe the land?

(a) A residential lease must describe the leased premises by reference to a public or private survey, if possible. If the land cannot be so described, the lease must include a legal description or other description that is sufficient to identify the leased premises, subject to our approval.

(b) If the tract is fractionated, we will describe the undivided trust or restricted interest in the leased premises.

Rental Requirements

§ 162.320 How much rent must be paid under a residential lease?

(a) A residential lease of tribal land may allow for any payment amount negotiated by the tribe, if the tribe submits a signed certification stating that it has determined the negotiated amount to be in its best interest. The tribe may request, in writing, that we require fair market rental, in which case we will determine fair market rental in accordance with § 162.322 and will approve the lease only if it requires payment of not less than fair market rental. Unless the tribe makes such a request, BIA will not require a valuation or appraisal or determine fair market rental, but instead will defer to the tribe's determination that the negotiated compensation is in its best interest.

(b) A residential lease of individually owned Indian land must require payment of not less than fair market rental except that we may approve a lease of individually owned Indian land that provides for the payment of nominal rent, or less than a fair market rental, if:

(1) The Indian landowners execute a written waiver of the right to receive fair market rental; and

(2) We determine it is in the Indian landowners' best interest, based on factors including but not limited to:

(i) The lessee is a member of the Indian landowner's immediate family as defined in § 162.003;

(ii) The lessee is a co-owner of the leased tract; or

(iii) A special relationship or circumstances exist that we believe warrant approval of the lease.

(c) Where the owners of the applicable percentage of interests consent to a residential lease on behalf of all the Indian landowners of a fractionated tract, the lease must provide that the non-consenting Indian landowners and those on whose behalf we have consented receive fair market rental.

§ 162.321 Will BIA require a valuation to determine fair market rental for a residential lease?

(a) We will not require valuations for negotiated residential leases of tribal land, or of any undivided tribal interest in a fractionated tract, if the tribe submits a signed certification. The tribe may request, in writing, that we require a valuation, in which case we will determine fair market rental in accordance with § 162.322.

(b) We will require valuations for individually owned Indian land, except that we may waive the valuation requirement when:

(1) 100 percent of the Indian landowners submit to us a written request to waive the valuation requirement; and

(2) We determine that the waiver is in the best interest of the Indian landowners, taking into consideration the landowners' written request.

(c) We have 30 days from receipt of the waiver request in paragraph (b) of this section to make a determination. Our determination whether to approve the request will be in writing and will state the basis for our approval or disapproval. If we fail to meet the 30-day deadline, the lessee or Indian landowners may take appropriate action under part 2 of this chapter.

§ 162.322 What type of valuation may be used to determine fair market rental for a residential lease?

(a) We will use a market analysis, appraisal, or other appropriate valuation method to determine the fair market rental for residential leases of individually owned Indian land, or at the request of the tribe for tribal land.

(b) We will either:

(1) Prepare a market analysis, appraisal, or other appropriate valuation method; or

(2) Use an approved market analysis, appraisal, or other appropriate valuation method from the Indian landowner or lessee.

(c) We will approve a market analysis, appraisal, or other appropriate valuation method for use only if it:

(1) Has been prepared in accordance with USPAP or a valuation method developed by the Secretary pursuant to 25 U.S.C. 2214; and

(2) Complies with Department policies.

§ 162.323 When are rental payments due under a residential lease?

(a) A residential lease must specify the dates on which all payments are due.

(b) Unless otherwise provided in the lease, payments may not be made or accepted more than one year in advance of the due date.

§ 162.324 Must a residential lease specify to whom rental payments may be made?

(a) A residential lease must specify whether the lessee will make payments directly to the Indian landowners (direct pay) or to us on their behalf.

(b) The lessee may make payments directly to the Indian landowners whose trust accounts are unencumbered when there are 10 or fewer beneficial owners and 100 percent of the beneficial owners agree to receive payment from the lessee at the commencement of the lease.

(1) If the lease provides that the lessee will directly pay the Indian landowners, the lease must include provisions for proof of payment.

(2) When we consent on behalf of an Indian landowner, the lessee must make payment to us.

(3) The lessee must send direct payments to the parties and addresses specified in the lease, unless the lessee receives notice of a change of ownership or address.

(4) Unless otherwise provided in the lease, payments may not be made payable directly to anyone other than the Indian landowners.

(5) Direct payments must continue through the duration of the lease, except if:

(i) 100 percent of the Indian landowners agree to suspend direct pay and provide us with documentation of their agreement, then the lessee must make all Indian landowners' payments to us; or

(ii) If any individual Indian landowner dies, is declared non compos mentis, becomes whereabouts unknown, or owes a debt resulting in a trust account encumbrance, then the lessee must make that individual Indian landowner's payment to us.

§ 162.325 What form of payment may be accepted under a residential lease?

(a) When payments are made directly to Indian landowners, the form of payment must be acceptable to the Indian landowners.

(b) When payments are made to us, we will accept:

(1) Money orders;

(2) Personal checks;

(3) Certified checks;

(4) Cashier's checks; or

(5) Electronic funds transfer payments.

(c) We will not accept cash, foreign currency, or third-party checks, except that we will accept third-party checks from financial institutions or Federal agencies.

(d) The preferred method of payment is electronic funds transfer payments.

§ 162.326 May a residential lease provide for non-monetary or varying types of compensation?

(a) With our approval, the lease may provide for:

(1) Alternative forms of rental, including, but not limited to in-kind consideration; or

(2) Varying types of compensation at specific stages during the life of the lease.

(b) For individually owned land, we will approve alternative forms of rental and varying types of compensation if we determine that it is in the best interest of the Indian landowners. For tribal land, we will defer to the tribe's determination that the alternative forms of rental and varying types of consideration are in its best interest, if the tribe submits a signed certification stating that it has determined the alternative forms of rental and varying types of consideration to be in its best interest.

§ 162.327 Will BIA notify a lessee when a payment is due under a residential lease?

Upon request of the Indian landowner, we may issue invoices to a lessee in advance of the dates on which payments are due under a residential lease, but the lessee's obligation to make such payments in a timely manner will not be excused if such invoices are not issued, delivered, or received.

§ 162.328 Must a residential lease provide for rental reviews or adjustments?

(a) For a residential lease with a term of five years or less, the parties may agree in the lease to provide for periodic reviews of the adequacy of rent in the lease. For a residential lease with a term of more than five years, a review of the adequacy of rent must occur at least every fifth year, in the manner specified in the lease, unless the conditions in paragraph (b) of this section are met. The lease must specify:

(1) When adjustments take effect;

(2) Who is authorized to make adjustments;

(3) What the adjustments are based on; and

(4) How to resolve disputes arising from the adjustments.

(b) A review of the adequacy of rent is not required if:

(1) The lease provides for automatic rental adjustments; or

(2) We determine it is in the best interest of the Indian landowners not to require a review or automatic adjustment based on circumstances including, but not limited to, where the lease provides for payment of less than fair market rental or the lease provides for most or all rent to be paid during the first five years of the lease term or prior to the date the review would be conducted.

(c) When a review results in the need for adjustment of rent, we must approve the adjustment and Indian landowners must consent to the adjustment in accordance with § 162.011, unless otherwise provided in the lease.

§ 162.329 What other types of payments are required under a residential lease?

(a) The lessee may be required to pay additional fees, taxes, and/or assessments associated with the use of the land, as determined by entities having jurisdiction, except as provided in § 162.315(c). The lessee must pay these amounts to the appropriate office.

(b) If the leased premises are within an Indian irrigation project or drainage district, except as otherwise provided in part 171 of this chapter, the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. Failure to make such payments will be treated as a violation of the lease.

Bonding and Insurance

§ 162.334 Must a lessee or assignee provide a performance bond for a residential lease?

(a) Except for leases for housing for public purposes or as provided in (f), the lessee must provide a performance bond in an amount sufficient to secure the contractual obligations including:

(1) No less than the highest annual rental specified in the lease, if the rent is paid annually, or other amount established by BIA in consultation with the tribe for tribal land or, where feasible, with Indian landowners for individually owned Indian land, if the rent is to be paid on a non-annual schedule;

(2) The operation and maintenance charges for any land located within an irrigation project; and

(3) As appropriate, the restoration and reclamation of the leased premises to

their condition at the commencement of the lease term or some other specified condition.

(b) The performance bond must be deposited with us and made payable only to us, and may not be modified without our approval.

(c) The lease must provide that we may adjust security or performance bond requirements at any time to reflect changing conditions.

(d) We may require that the surety provide any supporting documents needed to show that the performance bond will be enforceable, and that the surety will be able to perform the guaranteed obligations.

(e) The surety must provide notice to us at least 60 days before canceling a performance bond so that we may notify the lessee of its obligation to provide a substitute performance bond. Failure to provide a substitute performance bond will be a violation of the lease.

(f) We may waive the requirement for a performance bond upon the request of the Indian landowner, if the waiver is in the best interest of the Indian landowner, including if the lease is for less than fair market rental or nominal rent. We may revoke the waiver and require a performance bond at any time if the waiver is no longer in the best interest of the Indian landowner.

§ 162.335 What forms of performance bonds may be accepted under a residential lease?

(a) We will only accept a performance bond in one of the following forms:

(1) Cashiers' checks;

(2) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;

(3) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;

(4) Negotiable Treasury securities; or

(5) Surety bond issued by a company approved by the U.S. Department of the Treasury.

(b) All forms of performance bonds must:

(1) Indicate on their face that BIA approval is required for redemption;

(2) Be accompanied by a statement granting full authority to BIA to make an immediate claim upon or sell them if lessee violates the lease;

(3) Be irrevocable during the term of the performance bond; and

(4) Be automatically renewable during the term of the lease.

§ 162.336 What is the bond release process under a residential lease?

(a) Upon expiration, termination, or cancellation of the lease, the lessee must submit a written request for a performance bond release to BIA.

(b) Upon receipt of a request under paragraph (a) of this section, BIA will confirm with the tribe, for tribal land or, where feasible, with the Indian landowners for individually owned Indian land, that the lessee has complied with all lease obligations, then release the performance bond to the lessee unless we determine that the bond must be redeemed to fulfill the contractual obligations.

§ 162.337 Must a lessee provide insurance for a residential lease?

Except as provided in paragraph (c) of this section, a lessee must provide insurance necessary to protect the interests of the Indian landowners and in an amount sufficient to protect all insurable improvements on the premises.

(a) The insurance may include property, liability and/or casualty insurance, depending on the Indian landowners' interests to be protected.

(b) Both the Indian landowners and the United States must be identified as additional insured parties.

(c) We may waive the requirement for insurance upon the request of the Indian landowner, if a waiver is in the best interest of the Indian landowner, including if the lease is for less than fair market rental or nominal compensation. We may revoke the waiver and require insurance at any time if the waiver is no longer in the best interest of the Indian landowner.

Approval

§ 162.338 What documents must the parties submit to obtain BIA approval of a residential lease?

A lessee or the Indian landowner must submit the following documents to us to obtain BIA approval of a residential lease:

(a) A lease executed by the Indian landowner and the lessee that complies with the requirements of this part;

(b) A valuation, if required under § 162.321;

(c) Organizational documents, certificates, filing records, and resolutions or other authorization documents, including evidence of the representative's authority to execute a lease, if the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, except a tribal entity, to show that the lease will be enforceable and that the legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located;

(d) A performance bond, where required;

(e) Statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law;

(f) Reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and tribal land use requirements;

(g) A preliminary site plan identifying the proposed location of residential development, roads and utilities, if applicable;

(h) Information to assist us in our evaluation of the factors in 25 U.S.C. 415(a);

(i) Information to facilitate BIA's analysis under applicable environmental and cultural resources laws; and

(j) Any additional documentation we determine to be reasonably necessary for approval.

§ 162.339 What is the approval process for a residential lease?

(a) Before we approve a residential lease, we must determine that the lease is in the best interest of the Indian landowners. In making that determination, we will:

(1) Review the lease and supporting documents;

(2) Ensure compliance with all applicable laws and ordinances;

(3) Assure ourselves that adequate consideration has been given to the factors in 25 U.S.C. 415(a);

(4) Require any lease modifications or mitigation measures necessary to satisfy any requirements including any other Federal or tribal land use requirements; and

(5) If the lease is a negotiated lease, defer to the Indian landowners' determination that the lease is in their best interest, to the maximum extent possible.

(b) When we receive a residential lease proposal and all of the supporting documents that conform to this part, we will, within 30 days of receiving the documents at the appropriate BIA office, approve, disapprove, return the submission for revision, or notify the parties in writing that we need additional time to review the lease. Our letter notifying the parties that we need additional time to review the lease must identify our initial concerns and invite the parties to respond within 15 days. We have 30 days from sending the notification to make a determination whether to approve or disapprove the lease.

(c) If we fail to meet the deadlines in this section, then the parties may take appropriate action under part 2 of this chapter.

(d) We will make any lease approval or disapproval determination and the

basis for the determination, along with notification of appeal rights under part 2 of this chapter, in writing and will send the determination and notification to the parties to the lease.

(e) Any residential lease issued under the authority of the Native American Housing Assistance and Self-Determination Act, 25 U.S.C. 4211(a), whether on tribal land or on individually owned Indian land, must be approved by us and by the affected tribe.

(f) We will provide approved residential leases on tribal land to the lessee and provide a copy to the tribe. We will provide approved residential leases on individually owned Indian land to the lessee, and make copies available to the Indian landowners upon written request.

§ 162.340 When will a residential lease be effective?

(a) A residential lease will be effective on the date that we approve the lease, notwithstanding any appeal that may be filed under part 2 of this chapter.

(b) The lease may specify a date on which the obligations between the parties are triggered. Such date may be before or after the approval date under paragraph (a) of this section.

§ 162.341 Must residential lease documents be recorded?

(a) A residential lease, amendment, assignment, leasehold mortgage, and sublease must be recorded in our Land Titles and Records Office with jurisdiction over the leased land.

(1) We will record the lease or other document immediately following our approval.

(2) When our approval of an assignment or sublease is not required, the parties must record the assignment or sublease in the Land Title and Records Office with jurisdiction over the leased land.

(b) The tribe must record the following leases in the Land Titles and Records Office with jurisdiction over the leased lands, even though BIA approval is not required:

(1) Leases of tribal land that a corporate entity leases to a third party under 25 U.S.C. 477; and

(2) Leases of tribal land under a special act of Congress authorizing leases without our approval under certain conditions.

§ 162.342 What action may BIA take if a residential lease disapproval decision is appealed?

(a) If a party appeals our decision to disapprove a lease, assignment, amendment, sublease, or leasehold mortgage, then the official to whom the appeal is made may require the lessee to post an appeal bond in an amount necessary to protect the Indian landowners against financial losses and damage to trust resources likely to result from the delay caused by an appeal. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this chapter.

(b) The appellant may not appeal the appeal bond decision. The appellant may, however, request that the official to whom the appeal is made reconsider the bond decision, based on extraordinary circumstances. Any reconsideration decision is final for the Department.

Amendments

§ 162.343 May the parties amend a residential lease?

(a) The parties may amend a residential lease by obtaining:

(1) The lessee's signature;

(2) The Indian landowners' consent pursuant to the requirements contained in § 162.344; and

(3) BIA approval of the amendment under § 162.345 and § 162.346.

(b) The parties may not amend a residential lease if the lease expressly prohibits amendments.

§ 162.344 What are the consent requirements for an amendment of a residential lease?

(a) The Indian landowners, or their representatives under § 162.012, must consent to an amendment of a residential lease in the same percentages and manner as a new residential lease under § 162.011, unless the requirements in paragraphs (a)(1) or (a)(2) of this section are met.

(1) The approved residential lease establishes that individual Indian landowners are deemed to have consented if they do not object in writing to the amendment after a specified period of time following Indian landowners' receipt of the amendment. If the lease provides for deemed consent, it must require the parties to submit to us: a copy of the executed amendment or other documentation of the Indian landowners' consent; proof of mailing of the amendment to any Indian landowners who are deemed to have consented; and any other pertinent information to us for review.

(2) The approved residential lease authorizes one or more representatives to consent to an amendment on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consent to an amendment.

(b) Unless specifically authorized in the lease, the written power of attorney, or court document, Indian landowners may not be deemed to have consented to, and an Indian landowner's designated representative may not negotiate or consent to, an amendment that would:

(1) Reduce the payment obligations or terms to the Indian landowners;

(2) Increase or decrease the lease area; or

(3) Terminate or change the term of the lease.

§ 162.345 What is the approval process for an amendment of a residential lease?

We have 30 days from receipt of the executed amendment, proof of required consents, and required documentation to make a determination whether to approve the amendment or notify the parties in writing that we need additional time to review the amendment.

(a) Our letter notifying the parties that we need additional time to review the amendment must identify our initial concerns and invite the parties to respond within 15 days. We have 30 days from sending the notification to make a determination whether to approve or disapprove the amendment.

(b) If we fail to send either a determination or notification within 30 days from receipt of the required documents or 30 days from sending the notification, the amendment is deemed approved to the extent consistent with Federal law. We will retain our full enforcement authority for amendments that are deemed approved.

(c) Our determination whether to approve the amendment will be in writing and will state the basis for our approval or disapproval.

§ 162.346 How will BIA decide whether to approve an amendment of a residential lease?

(a) We may only disapprove a residential lease amendment if:

(1) The required consents have not been obtained from the parties to the lease and any mortgagees or sureties;

(2) The lessee is in violation of the lease; or

(3) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) We may not unreasonably withhold approval of an amendment.

Assignments

§ 162.347 May a lessee assign a residential lease?

A lessee may assign a residential lease by meeting the consent requirements in

§ 162.348 and obtaining our approval of the assignment under § 162.349 and § 162.350, unless the lease expressly prohibits assignments.

§ 162.348 What are the consent requirements for an assignment of a residential lease?

(a) The Indian landowners, or their representatives under § 162.012, must consent to an assignment of a residential lease in the same percentages and manner as a new residential lease under § 162.011, unless the requirements in paragraphs (a)(1), (a)(2), or (a)(3) of this section are met.

(1) The assignee agrees in writing to assume all of the lessee's obligations under the lease, including bonding requirements, and:

(i) The lease provides for assignments without further consent of the Indian landowners or with consent in specified percentages and manner; or

(ii) The assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance.

(2) The lease establishes that individual Indian landowners are deemed to have consented where they do not object in writing to the assignment after a specified period of time following landowners' receipt of the assignment. If the lease provides for deemed consent, it must require the parties to submit to us: a copy of the executed assignment or other documentation of the Indian landowners' consent; proof of mailing of the assignment to any Indian landowners who are deemed to have consented; and any other pertinent information for us to review.

(3) The lease authorizes one or more of the Indian landowners to consent on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to an assignment.

(b) The lessee must obtain the consent of the holders or any bonds or mortgages.

§ 162.349 What is the approval process for an assignment of a residential lease?

(a) The lessee may assign the lease without our approval if:

(1) The assignee is a leasehold mortgagee or its designee, acquiring the lease either through foreclosure or by conveyance;

(2) The assignee agrees in writing to assume all of the obligations of the lease; and

(3) The assignee agrees in writing that any transfer of the lease will be in accordance with applicable law under § 162.013.

(b) We have 30 days from receipt of the executed assignment, proof of required consents, and required documentation to make a determination whether to approve the assignment or notify the parties that we need additional information. Our determination whether to approve the assignment will be in writing and will state the basis for our approval or disapproval.

(c) If we fail to meet the deadline in this section, the lessee or Indian landowners may take appropriate action under part 2 of this chapter.

§ 162.350 How will BIA decide whether to approve an assignment of a residential lease?

(a) We may only disapprove an assignment of a residential lease if:

(1) The Indian landowners have not consented, and their consent is required;

(2) The lessee's mortgagees or sureties have not consented;

(3) The lessee is in violation of the lease;

(4) The assignee does not agree to be bound by the terms of the lease;

(5) The proposed use by the assignee will require an amendment to the lease; or

(6) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(6) of this section, we may consider whether:

(1) The value of any part of the leased premises not covered by the assignment would be adversely affected; and

(2) If a performance bond is required, the assignee has bonded its performance and provided supporting documents that demonstrate that the lease will be enforceable against the assignee, and that the assignee will be able to perform its obligations under the lease or assignment.

(c) If the lease was approved at less than fair market rental and the assignee is not a co-owner or member of the Indian landowners' immediate family, the assignment must provide for the assignee to pay fair market rental to the Indian landowner.

(d) We may not unreasonably withhold approval of an assignment.

Subleases

§ 162.351 May a lessee sublease a residential lease?

(a) A lessee may sublease a residential lease by meeting the consent requirements in § 162.352 and obtaining our approval of the sublease under § 162.353 and § 162.354, or by meeting the conditions in paragraph (b) of this section, unless the lease expressly prohibits subleases.

(b) Where the sublease is part of a housing development for public purposes, the lessee may sublease without meeting consent requirements or obtaining BIA approval of the sublease, as long as:

(1) The lease provides for subleasing without meeting consent requirements or obtaining BIA approval;

(2) We have approved a general plan for the development; and

(3) We have approved a sublease form and general rent schedule for use in the project.

§ 162.352 What are the consent requirements for a sublease of a residential lease?

(a) The Indian landowners must consent to a sublease of a residential lease in the same percentages and manner as a new residential lease pursuant to § 162.011, unless the requirements in paragraphs (a)(1) or (a)(2) of this section are met.

(1) The lease establishes that individual Indian landowners are deemed to have consented where they do not object in writing to the sublease after a specified period of time following landowners' receipt of the sublease. If the lease provides for deemed consent, it must require the parties to submit to us: a copy of the executed sublease or other documentation of the landowners' consent; proof of mailing of the sublease to any Indian landowners who are deemed to have consented; and any other pertinent information for us to review.

(2) The lease authorizes one or more of the Indian landowners to consent on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to a sublease.

(b) The lessee must obtain the consent of any sureties.

§ 162.353 What is the approval process for a sublease of a residential lease?

We have 30 days from receipt of the executed sublease, proof of required consents, and required documentation to make a determination whether to approve the sublease or notify the parties in writing that we need additional time to review the sublease.

(a) Our letter notifying the parties that we need additional time to review the sublease must identify our initial concerns and invite the parties to respond within 15 days. We have 30 days from sending the notification to

make a determination whether to approve or disapprove the sublease. Our determination whether to approve the sublease will be in writing and will state the basis for our approval or disapproval.

(b) If we fail to send either a determination or notification within 30 days from receipt of required documents or from sending the notification, the sublease is deemed approved to the extent consistent with Federal law. We will retain our full enforcement authority for subleases that are deemed approved.

§ 162.354 How will BIA decide whether to approve a sublease of a residential lease?

(a) We may only disapprove a sublease of a residential lease if:

(1) The Indian landowners have not consented, and their consent is required;

(2) The lessee's mortgagees or sureties have not consented;

(3) The lessee is in violation of the lease;

(4) The lessee will not remain liable under the lease;

(5) The sublessee does not agree to be bound by the terms of the lease;

(6) The proposed use by the sublessee will require an amendment of the lease; or

(7) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(7) of this section, we will consider whether:

(1) The value of any part of the leased premises not covered by the sublease would be adversely affected; and

(2) If a performance bond is required by the sublease, the sublessee has bonded its performance and provided supporting documents that demonstrate that the lease will be enforceable against the sublessee, and that the sublessee will be able to perform its obligations under the lease or sublease.

(c) If the lease was approved at less than fair market rental, and the sublessee is not a co-owner or a member of the Indian landowner's immediate family, the sublease must provide for the sublessee to pay fair market rental to the Indian landowner.

(d) We may not unreasonably withhold approval of a sublease.

Leasehold Mortgages

§ 162.355 May a lessee mortgage a residential lease?

A lessee may mortgage a residential lease by meeting the consent requirements in § 162.356 and obtaining BIA approval of the leasehold mortgage under in § 162.357 and § 162.358, unless the lease expressly prohibits leasehold mortgages.

§ 162.356 What are the consent requirements for a leasehold mortgage of a residential lease?

The Indian landowners, or their representatives under § 162.012, must consent to a leasehold mortgage under a residential lease in the same percentages and manner as a new residential lease under § 162.011, unless the requirements in paragraphs (a), (b), or (c) of this section are met.

(a) The lease contains a general authorization for a leasehold mortgage and states what law would apply in case of foreclosure.

(b) The lease establishes that individual Indian landowners are deemed to have consented where they do not object in writing to the leasehold mortgage after a specified period of time following landowners' receipt of the leasehold mortgage. If the lease provides for deemed consent, it must require the parties to submit to us: A copy of the executed leasehold mortgage or other documentation of the Indian landowners' consent; proof of mailing of the leasehold mortgage to any Indian landowners who are deemed to have consented; and any other pertinent information for us to review.

(c) The lease authorizes one or more representatives to consent to a leasehold mortgage on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to a leasehold mortgage.

§ 162.357 What is the approval process for a leasehold mortgage of a residential lease?

(a) We have 30 days from receipt of the executed leasehold mortgage, proof of required consents, and required documentation to make a determination whether to approve the leasehold mortgage or notify the parties that we need additional information. Our determination whether to approve the leasehold mortgage will be in writing and will state the basis for our approval or disapproval.

(b) If we fail to meet the deadline in this section, the lessee may take appropriate action under part 2 of this chapter.

§ 162.358 How will BIA decide whether to approve a leasehold mortgage of a residential lease?

(a) We may only disapprove the leasehold mortgage if:

(1) The Indian landowners have not consented, and their consent is required;

(2) The holders of lessee's bond have not consented; or

(3) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(3) of this section, we will consider whether:

(1) The lessee's ability to comply with the lease would be adversely affected by any new loan obligations;

(2) Any lease provisions would require modification to be consistent with the mortgage;

(3) The remedies available to us or to Indian landowners would be limited (beyond any additional notice and cure rights to be afforded to the mortgagee) in the event of a lease violation; and

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a loan default by the lessee.

(c) We may not unreasonably withhold approval of a leasehold mortgage.

Effectiveness, Compliance, and Enforcement

§ 162.359 When will an amendment, assignment, sublease, or leasehold mortgage under a residential lease be effective?

(a) An amendment, assignment, sublease, or leasehold mortgage under a residential lease will be effective upon our approval, notwithstanding any appeal that may be filed under part 2 of this chapter, unless approval is not required under § 162.008(b), § 162.349(a), or § 162.351(b), or the conditions in paragraph (b) of this section apply. We will provide copies of approved documents to the party requesting approval, and upon request, to other parties to the agreement.

(b) If the amendment or sublease was deemed approved pursuant to § 162.345(b) or § 162.353(b), the amendment or sublease becomes effective 45 days from the date the parties mailed or delivered the document to us for our review.

(c) An assignment or sublease that does not require landowner consent or BIA approval shall be effective upon execution by the parties.

§ 162.360 What happens if BIA disapproves an amendment, assignment, sublease, or leasehold mortgage?

If we disapprove an amendment, assignment, sublease, or leasehold mortgage of a residential lease, we will notify the parties immediately and advise them of their right to appeal the decision under part 2 of this chapter.

§ 162.361 May BIA investigate compliance with a residential lease?

(a) We may enter the leased premises at any reasonable time, upon reasonable notice, to protect the interests of the Indian landowners and ensure that the lessee is in compliance with the requirements of the lease.

(b) If the Indian landowner notifies us that a specific lease violation has occurred, we will promptly initiate an appropriate investigation.

§ 162.362 May a residential lease provide for negotiated remedies in the event of a violation?

(a) A residential lease of tribal land may provide either or both parties with negotiated remedies in the event of a lease violation, including, but not limited to, the power to terminate the lease. If the lease provides the parties with the power to terminate the lease, BIA approval of the termination is not required and the termination is effective without BIA cancellation. The parties must notify us of the termination so that we may record it in the Land Titles and Records Office.

(b) A residential lease of individually owned Indian land may provide either or both parties with negotiated remedies, so long as the lease also specifies the manner in which those remedies may be exercised by or on behalf of the Indian landowners of the applicable percentage of interests under § 162.011 of this part. If the lease provides the parties with the power to terminate the lease, BIA concurrence with the termination is required to ensure that the Indian landowners of the applicable percentage of interests have consented. BIA will record the termination in the Land Titles and Records Office.

(c) The parties must notify any surety or mortgagee of a termination of a residential lease.

(d) Negotiated remedies may apply in addition to, or instead of, the cancellation remedy available to us, as specified in the lease.

(e) A residential lease may provide for lease disputes to be resolved in tribal court or any other court of competent jurisdiction, by a tribal governing body in the absence of a tribal court, or through an alternative dispute resolution method. We may not be bound by decisions made in such forums, but we will defer to ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us.

162.363 What will BIA do about a violation of a residential lease?

(a) If we determine there has been a violation of the conditions of a residential lease other than a violation of payment provisions covered by paragraph (b) of this section, we will promptly send the lessee and its sureties and any mortgagee a notice of violation by certified mail, return receipt requested.

(1) We will send a copy of the notice of violation to the tribe for tribal land, or provide constructive notice to Indian landowners for individually owned Indian land.

(2) Within 10 business days of the receipt of a notice of violation, the lessee must:

(i) Cure the violation and notify us in writing that the violation has been cured;

(ii) Dispute our determination that a violation has occurred; or

(iii) Request additional time to cure the violation.

(3) If a violation is determined to have occurred, we will make a reasonable attempt to notify the Indian landowners.

(4) We may order the lessee to stop work.

(b) A lessee's failure to pay rent in the time and manner required by a residential lease is a violation of the lease, and we will issue a notice of violation in accordance with this paragraph.

(1) We will send the lessees and its sureties a notice of violation by certified mail, return receipt requested:

(i) Promptly following the date on which the payment was due, if the lease requires that rental payments be made to us; or

(ii) Promptly following the date on which we receive actual notice of non-payment from the Indian landowners, if the lease provides for payment directly to the Indian landowners.

(2) We will send a copy of the notice of violation to the tribe for tribal land, or provide constructive notice to Indian landowners for individually owned Indian land.

(3) The lessee must provide adequate proof of payment as required in the notice of violation.

(c) The lessee and its sureties will continue to be responsible for the obligations contained in the lease until the lease is terminated, cancelled, or expires.

§ 162.364 What will BIA do if the lessee does not cure a violation of a residential lease on time?

(a) If the lessee does not cure a violation of a residential lease within the requisite time period, or provide adequate proof of payment as required in the notice of violation, we will consult with the tribe for tribal land or, where feasible, with Indian landowners for individually owned Indian land, and determine whether:

(1) We should cancel the lease;

(2) The Indian landowners wish to invoke any remedies available to them under the lease;

(3) We should invoke other remedies available under the lease or applicable law, including, collection on any available performance bond or, for failure to pay rent, referral of the debt to the Department of the Treasury for collection; or

(4) The lessee should be granted additional time in which to cure the violation.

(b) We may take action to recover unpaid rent and any associated late payment charges.

(1) We do not have to cancel the lease or give any further notice to the lessee before taking action to recover unpaid rent.

(2) We may still take action to recover any unpaid rent if we cancel the lease.

(c) If we decide to cancel the lease, we will send the lessee and its sureties and any mortgagees a cancellation letter by certified mail, return receipt requested within 5 business days of our decision. We will send a copy of the cancellation letter to the tribe for tribal land, and will provide Indian landowners for individually owned Indian land with actual or constructive notice of the cancellation. The cancellation letter will:

(1) Explain the grounds for cancellation;

(2) If applicable, notify the lessee of the amount of any unpaid rent or late payment charges due under the lease;

(3) Notify the lessee of their right to appeal under part 2 of this chapter, including the possibility that the official to whom the appeal is made may require the lessee to post an appeal bond;

(4) Order the lessee to vacate the property within 31 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and

(5) Require any other action BIA deems necessary to protect the Indian landowners.

(d) We may invoke any other remedies available to us under the lease, including collecting on any available performance bond, and the Indian landowner may pursue any available remedies under tribal law.

§ 162.365 Will late payment charges or special fees apply to delinquent payments due under a residential lease?

(a) Late payment charges will apply as specified in the lease. The failure to pay such amounts will be treated as a lease violation.

(b) The following special fees may be assessed to cover administrative costs incurred by the United States in the collection of the debt, if rent is not paid in the time and manner required, in addition to late payment charges that must be paid to the Indian landowners under the lease:

The lessee will pay . . .	For . . .
(a) $50.00	Dishonored checks.
(b) $15.00	Processing of each notice or demand letter.
(c) 18 percent of balance due.	Treasury processing following referral for collection of delinquent debt.

§ 162.366 How will payment rights relating to a residential lease be allocated between the Indian landowners and the lessee?

The residential lease may allocate rights to payment for insurance proceeds, trespass damages, condemnation awards, settlement funds, and other payments between the Indian landowners and the lessee. If not specified in the insurance policy, order, award, judgment, or other document including the lease, the Indian landowners will be entitled to receive such payments.

§ 162.367 When will a cancellation of a residential lease be effective?

(a) A cancellation involving a residential lease will not be effective until 31 days after the lessee receives a cancellation letter from us, or 41 days from the date we mailed the letter, whichever is earlier.

(b) The cancellation decision will be stayed if an appeal is filed unless the cancellation is made immediately effective under part 2 of this chapter. While a cancellation decision is stayed, the lessee must continue to pay rent and comply with the other terms of the lease.

§ 162.368 What will BIA do if a lessee remains in possession after a residential lease expires or is cancelled?

If a lessee remains in possession after the expiration or cancellation of a residential lease, we may treat the unauthorized possession as a trespass under applicable law. Unless the applicable percentage of Indian landowners under § 162.011 have notified us in writing that they are engaged in good faith negotiations with the holdover lessee to obtain a new lease, we may take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law, such as forcible entry and detainer action.

§ 162.369 Will BIA regulations concerning appeal bonds apply to cancellation decisions involving residential leases?

(a) Except as provided in paragraph (b) of this section, the appeal bond provisions in part 2 of this chapter will apply to appeals from lease cancellation decisions.

(b) The lessee may not appeal the appeal bond decision. The lessee may, however, request that the official to whom the appeal is made reconsider the appeal bond decision, based on extraordinary circumstances. Any reconsideration decision is final for the Department.

§ 162.370 When will BIA issue a decision on an appeal from a residential leasing decision?

BIA will issue a decision on an appeal from a leasing decision within 30 days of receipt of all pleadings.

§ 162.371 What happens if the lessee abandons the leased premises?

If a lessee abandons the leased premises, we will treat the abandonment as a violation of the lease. The lease may specify a period of non-use after which the lease premises will be considered abandoned.

Subpart D—Business Leases

Business Leasing General Provisions

§ 162.401 What types of leases does this subpart cover?

(a) This subpart covers both ground leases (undeveloped land) and leases of developed land (together with the improvements thereon) on Indian land, including:

(1) Leases for residential purposes that are not covered in subpart C;

(2) Leases for business purposes that are not covered in subpart E;

(3) Leases for religious, educational, recreational, cultural, or other public purposes; and

(4) Commercial or industrial leases for retail, office, manufacturing, storage, biomass, waste-to-energy, or other business purposes.

(b) Leases covered by this subpart may authorize the construction of single-purpose or mixed use projects designed for use by any number of lessees or occupants.

§ 162.402 Is there a model business lease form?

There is no model business lease because of the need for flexibility in negotiating and writing business leases; however, we may provide other guidance, such as checklists and sample lease provisions to assist in the lease negotiation process. Additionally, we may assist the Indian landowners, upon their request, in developing appropriate lease provisions or in using tribal lease forms that conform to the requirements of this part.

Lease Requirements

§ 162.411 How long may the term of a business lease run?

(a) A business lease must provide for a definite term, state if there is an option to renew and, if so, provide for a definite term for the renewal period. Unless authorized by paragraph (b), a business lease may have an initial term not to exceed 25 year and one renewal period not to exceed 25 years.

(b) If a Federal statute provides for a longer maximum term (*e.g.,* 25 U.S.C. 415(a) allows for a maximum term of 99 years for certain tribes), the lease may provide for a primary term, and one renewal not to exceed 25 years, so long as the maximum term, including the renewal, does not exceed the maximum term established by statute.

(c) The lease term, including any renewal, must be reasonable, given the:

(1) Purpose of the lease;

(2) Type of financing; and

(3) Level of investment.

(d) Where all of the trust or restricted interests in a tract are owned by a deceased Indian whose heirs and devisees have not yet been determined, the maximum term may not exceed two years.

(e) The lease may not be extended by holdover.

§ 162.412 What must the lease include if it contains an option to renew?

(a) If the lease provides for an option to renew, the lease must specify:

(1) The time and manner in which the option must be exercised or is automatically effective;

(2) That confirmation of the renewal will be submitted to us;

(3) Whether Indian landowner consent to the renewal is required;

(4) That the lessee must provide notice to the Indian landowner and any mortgagees of the renewal;

(5) The additional consideration, if any, that will be due upon the exercise of the option to renew or the commencement of the renewal term;

(6) That any change in the terms of the lease will be considered an amendment subject to consent and BIA approval requirements pursuant to § 162.444; and

(7) Any other conditions for renewal (*e.g.,* the lessee may not be in violation of the lease at the time of renewal).

(b) We must record any renewal of a lease in the Land Title and Records Office.

§ 162.413 Are there mandatory provisions that a business lease must contain?

(a) All business leases must identify:

(1) The tract or parcel of land being leased;

(2) The purpose of the lease and authorized uses of the leased premises;

(3) The parties to the lease;

(4) The term of the lease;

(5) The owner being represented and the authority under which such action is being taken, where one executes a lease in a representative capacity;

(6) The citation of the statute that authorizes our approval;

(7) Who is responsible for constructing, owning, operating, maintaining, and managing improvements pursuant to § 162.415;

(8) Payment requirements and late payment charges, including interest;

(9) Due diligence requirements under § 162.417 (unless the lease is for religious, educational, recreational, cultural, or other public purposes);

(10) Insurance requirements under § 162.437; and

(11) Bonding requirements under § 162.434. If a performance bond is required, the lease must state that the lessee must obtain the consent of the surety for any legal instrument that directly affects their obligations and liabilities.

(b) All business leases must include the following provisions:

(1) The obligations of the lessee and its sureties to the Indian landowners are also enforceable by the United States, so long as the land remains in trust or restricted status;

(2) Nothing in the lease would prevent or delay termination of Federal trust responsibilities for the land during the lease's term;

(3) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;

(4) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under § 162.013;

(5) The lessee indemnifies and holds the United States and the Indian landowners harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises (this provision is not mandatory if the lessee would be prohibited by law from making such an agreement);

(6) The lessee indemnifies the United States and the Indian landowners against all liabilities or costs relating to the use, handling, treatment, removal, storage, transportation, or disposal of hazardous materials, or the release or discharge of any hazardous material from the leased premises that occurs during the lease term, regardless of fault, unless the liability or cost arises from the gross negligence or willful misconduct of the Indian landowner (this provision is not mandatory if the lessee would be prohibited by law from making such an agreement);

(7) In the event that historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the lessee will contact BIA and the tribe that has jurisdiction over the land to determine how to proceed and appropriate disposition;

(8) BIA has the right, at any reasonable time during the term of the lease and upon reasonable notice, to enter upon the leased premises for inspection; and

(9) Unless otherwise indicated, this is a lease of the trust and restricted interests in the property described and is not a lease of any undivided fee interests. All rental payments by the lessee will be distributed to the trust and restricted landowners and life estate holders on trust and restricted land only. The lessee will be responsible for accounting to the owners of any fee interests that may exist in the property being leased.

(c) We may treat any provision of a lease, sublease, amendment, assignment, or leasehold mortgage that is in violation of Federal law as a violation of the lease.

§ 162.414 May improvements be made under a business lease?

The lessee may construct improvements under a business lease if the business lease specifies, or provides for the development of:

(a) A plan that describes the type and location of any improvements to be built by the lessee; and

(b) A schedule for construction of the improvements.

§ 162.415 How must a business lease address ownership of improvements?

(a) A business lease must specify who will own any improvements the lessee builds during the lease term and may specify that any improvements the lessee builds may be conveyed to the Indian landowners during the lease term. In addition, the lease must indicate whether each specific improvement the lessee builds will, upon the expiration or termination of the lease:

(1) Remain on the leased premises, in a condition satisfactory to the Indian landowners, and become the property of the Indian landowners;

(2) Be removed within a time period specified in the lease, at the lessee's expense, with the leased premises to be restored as close as possible to their condition before construction of such improvements; or

(3) Be disposed of by other specified means.

(b) A lease that requires the lessee to remove the improvements must also provide the Indian landowners with an option to take possession of and title to the improvements if the improvements are not removed within the specified time period.

(c) Any permanent improvements on the leased land shall be subject to 25 CFR 1.4 and, in addition, shall not be subject to any fee, tax, assessment, levy, or other such charge imposed by any State or political subdivision of a State, without regard to ownership of those improvements. Improvements may be subject to taxation by the Indian tribe with jurisdiction.

§ 162.416 How will BIA enforce removal requirements in a business lease?

We may take appropriate enforcement action in consultation with the tribe for tribal land or, where feasible, with Indian landowners for individually owned Indian land, to ensure removal of the improvements or restoration of the premises at the lessee's expense. We may take such enforcement action after termination or expiration of the lease. We may collect and hold the performance bond until removal and restoration are completed.

§ 162.417 What requirements for due diligence must a business lease include?

(a) If improvements are to be built, the business lease must include due diligence requirements that require the lessee to complete construction of any improvements within the schedule specified in the lease. The lessee must provide the Indian landowners and BIA good cause as to the nature of any delay, the anticipated date of construction of facilities, and evidence of progress toward commencement of construction, if construction does not occur, or is not expected to be completed, within the time period specified in the lease.

(b) Failure of the lessee to comply with the due diligence requirements of the lease is a violation of the lease and may lead to cancellation of the lease under § 162.464.

(c) BIA may waive the requirements in this section if such waiver is in the best interest of the Indian landowners.

(d) The requirements of this section do not apply to leases for religious, educational, recreational, cultural, or other public purposes.

§ 162.418 May a business lease allow compatible uses?

A business lease may provide for the Indian landowner to use, or authorize others to use, the leased premises for other uses compatible with the purpose of the business lease and consistent with the terms of the business lease. Any such use or authorization by the Indian landowner will not reduce or offset the monetary compensation for the business lease.

§ 162.419 How must a business lease describe the land?

(a) A business lease must describe the leased premises by reference to an official or certified survey pursuant to § 162.438(j) of this part.

(b) If the tract is fractionated we will describe the undivided trust interest in the leased premises.

Monetary Compensation Requirements

§ 162.420 How much monetary compensation must be paid under a business lease?

(a) A business lease of tribal land may allow for any payment amount negotiated by the tribe as long as the tribe provides the tribal authorization required by § 162.421(a). The tribe may request, in writing, that we require fair market rental, in which case we will determine fair market rental in accordance with § 162.422 and will approve the lease only if it requires payment of not less than fair market rental. Unless the tribe makes such a request, BIA will not require a valuation or appraisal or determine fair market rental, but instead will defer to the tribe's determination that the negotiated compensation is in its best interest.

(b) A business lease of individually owned Indian land must require payment of not less than fair market rental before any adjustments, based on a fixed amount, a percentage of the projected income, or some other method, unless paragraphs (1) or (2) of this section permit a lesser amount. The lease must establish how the fixed amount, percentage, or combination will be calculated and the frequency at which the payments will be made.

(1) We may approve a lease of individually owned Indian land that provides for the payment of nominal compensation, or less than a fair market rental, if:

(i) The Indian landowners execute a written waiver of the right to receive fair market rental; and

(ii) We determine it is in the Indian landowners' best interest, based on factors including, but not limited to:

(A) The lessee is a member of the individual Indian landowner's immediate family as defined in § 162.003;

(B) The lessee is a co-owner in the leased tract;

(C) A special relationship or circumstances exist that we believe warrant approval of the lease; or

(D) The lease is for religious, educational, recreational, cultural, or other public purposes.

(2) We may approve a lease that provides for payment of less than a fair market rental during the pre-development or construction periods, if we determine it is in the Indian landowners' best interest. The lease must specify the amount of the compensation and the applicable periods.

(3) Where the owners of the applicable percentage of interests under § 162.011 of this part execute a business lease on behalf of all of the Indian landowners of a fractionated tract, the lease must provide that the non-consenting Indian landowners, and those on whose behalf we have consented, receive a fair market rental.

§ 162.421 Will BIA require a valuation to determine fair market rental for a business lease?

(a) We will not require valuations or appraisals for negotiated business leases of tribal land, or of any undivided tribal interest in a fractionated tract, if the tribe submits a tribal authorization expressly stating that it:

(1) Has negotiated compensation satisfactory to the tribe;

(2) Waives valuation and appraisal; and

(3) Has determined that accepting such negotiated compensation and waiving valuation and appraisal is in its best interest.

(b) The tribe may request that BIA require a valuation or appraisal, in which case BIA must determine fair market rental in accordance with § 162.422.

(c) We may only waive the valuation requirement for business leases on individually owned Indian land if:

(1) The lease is for religious, educational, recreational, cultural, or other public purposes; and

(2) 100 percent of the Indian landowners submit to us a written request to waive the valuation requirement; and

(3) We determine that the waiver is in the best interest of the Indian landowners, taking into consideration the landowners' written request.

(d) We have 30 days from receipt of the waiver request in paragraph (c) of this section to make a determination. Our determination whether to approve the request will be in writing and will state the basis for our approval or disapproval. If we fail to meet the 30-day deadline, the lessee or Indian landowners may take appropriate action under part 2 of this chapter.

§ 162.422 What type of valuation may be used to determine fair market rental for a business lease?

(a) We will use an appraisal to determine the fair market rental before we approve a business lease of individually owned Indian land, or at the request of the tribe for tribal land, unless we approve another type of valuation pursuant to paragraph (d).

(b) We will either:

(1) Prepare an appraisal; or

(2) Use an approved appraisal from the Indian landowner or lessee.

(c) We will approve an appraisal for use only if it:

(1) Has been prepared in accordance with USPAP or a valuation method developed by the Secretary pursuant to 25 U.S.C. 2214; and

(2) Complies with Departmental policies regarding appraisals, including third-party appraisals.

(d) Upon receipt of a tribal authorization, we may use some other type of valuation for a business lease on tribal land, if it conforms to USPAP or a valuation method developed by the Secretary pursuant to 25 U.S.C. 2214.

§ 162.423 When are monetary compensation payments due under a business lease?

(a) A business lease must specify the dates on which all payments are due.

(b) Unless otherwise provided in the lease, payments may not be made or accepted more than one year in advance of the due date.

§ 162.424 Must a business lease specify to whom monetary compensation payments may be made?

(a) A business lease must specify whether the lessee will make payments directly to the Indian landowners (direct pay) or to us on their behalf.

(b) The lessee may make payments directly to the Indian landowners whose trust accounts are unencumbered when there are 10 or fewer beneficial owners and 100 percent of the beneficial owners agree to receive payment directly from the lessee.

(1) If the lease provides that the lessee will directly pay the Indian landowners,

the lease must also require that the lessee provide us with certification of payment.

(2) When we consent on behalf of an Indian landowner, the lessee must make payment to us.

(3) The lessee must send direct payments to the parties and addresses specified in the lease, unless the lessee receives notice of a change of ownership or address.

(4) Unless otherwise provided in the lease, compensation payments may not be made payable directly to anyone other than the Indian landowners.

(5) Direct payments must continue through the duration of the lease, except if:

(i) 100 percent of the Indian landowners agree to suspend direct pay and provide us with documentation of their agreement, then the lessee must make all Indian landowners' payments to us; or

(ii) If any individual Indian landowner dies, is declared non compos mentis, becomes whereabouts unknown, or owes a debt resulting in a trust account encumbrance, then the lessee must make that individual Indian landowner's payment to us.

§ 162.425 What form of monetary compensation payment may be accepted under a business lease?

(a) When payments are made directly to Indian landowners, the form of payment must be acceptable to the Indian landowners.

(b) When payments are made to us, we will accept:

(1) Money orders;

(2) Certified checks;

(3) Cashier's checks; or

(4) Electronic funds transfer payments.

(c) We will not accept cash, personal checks, foreign currency, or third-party checks except for third-party checks from financial institutions.

(d) The preferred method of payment is electronic funds transfer payments.

§ 162.426 May the business lease provide for non-monetary or varying types of compensation?

(a) With our approval, the lease may provide for:

(1) Alternative forms of compensation, including but not limited to payments based on percentage of income or in-kind consideration; or

(2) Varying types of compensation at specific stages during the life of the lease, including but not limited to fixed annual payments during construction and payments based on income during an operational period.

(b) For individually owned land, we will approve alternative forms of compensation and varying types of compensation if we determine that it is in the best interest of the Indian landowners. For tribal land, we will defer to the tribe's determination that the alternative forms of rental and varying types of consideration are in its best interest, if the tribe submits a signed certification stating that it has determined the alternative forms of rental and varying types of consideration to be in its best interest.

§ 162.427 Will BIA notify a lessee when a payment is due under a business lease?

Upon request of the Indian landowner, we may issue invoices to a lessee in advance of the dates on which payments are due under a business lease, but the lessee's obligation to make such payments in a timely manner will not be excused if such invoices are not issued, delivered, or received.

§ 162.428 Must a business lease provide for compensation reviews or adjustments?

(a) A review of the adequacy of compensation must occur at least every fifth year, in the manner specified in the lease, unless the conditions in paragraph (b) of this section are met. The lease must specify:

(1) When adjustments take effect;

(2) Who is authorized to make adjustments;

(3) What the adjustments are based on; and

(4) How disputes arising from the adjustments are resolved.

(b) A review of the adequacy of compensation is not required if:

(1) The lease provides for automatic adjustments; or

(2) We determine it is in the best interest of the Indian landowners not to require a review or automatic adjustment based on circumstances including, but not limited to, the following:

(1) The lease provides for payment of less than fair market rental;

(2) The lease is for religious, educational, recreational, cultural, or other public purposes; or

(3) The lease provides for most or all of the compensation to be paid during the first five years of the lease term or prior to the date the review would be conducted.

(c) When a review results in the need for adjustment of compensation, we must approve the adjustment and Indian landowners must consent to the adjustment in accordance with § 162.011, unless otherwise provided in the lease.

§ 162.429 What other types of payments are required under a business lease?

(a) The lessee may be required to pay additional fees, taxes, and/or assessments associated with the use of the land, as determined by entities having jurisdiction, except as provided in § 162.415(c). The lessee must pay these amounts to the appropriate office.

(b) If the leased premises are within an Indian irrigation project or drainage district, except as otherwise provided in part 171 of this chapter, the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. Failure to make such payments will be treated as a violation of the lease.

(c) Where the property is subject to at least one other lease for another compatible use, the lessees may agree among themselves as to how to allocate payment of the Indian irrigation operation and maintenance charges.

Bonding and Insurance

§ 162.434 Must a lessee provide a performance bond for a business lease?

(a) Except as provided in paragraph (f) of this section, the lessee must provide a performance bond in an amount sufficient to secure the contractual obligations including:

(1) No less than the highest annual rental specified in the lease, if compensation is paid annually, or other amount established by BIA in consultation with the tribe for tribal land or, where feasible, with Indian landowners for individually owned Indian land, if the compensation is to be paid on a non-annual schedule;

(2) The construction of any required improvements;

(3) The operation and maintenance charges for any land located within an irrigation project; and

(4) The restoration and reclamation of the leased premises, to their condition at the commencement of the lease term or some other specified condition.

(b) The performance bond must be deposited with us and made payable only to us, and may not be modified without our approval.

(c) The lease must provide that we may adjust security or performance bond requirements at any time to reflect changing conditions.

(d) We may require that the surety provide any supporting documents needed to show that the performance bond will be enforceable, and that the surety will be able to perform the guaranteed obligations.

(e) The surety must provide notice to us at least 60 days before canceling a performance bond so that we may notify the lessee of its obligation to provide a substitute performance bond and require collection of the bond prior to the cancellation date. Failure to provide a substitute performance bond will be a violation of the lease.

(f) We may waive the requirement for a performance bond if the lease is for religious, educational, recreational, cultural, or other public purposes, or upon the request of the Indian landowner, if a waiver is in the best interest of the Indian landowner. We may revoke the waiver and require a performance bond at any time if the waiver is no longer in the best interest of the Indian landowner.

§ 162.435 What forms of performance bond may be accepted under a business lease?

(a) We will only accept a performance bond in one of the following forms:

(1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;

(2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;

(3) Negotiable Treasury securities; or

(4) Surety bond issued by a company approved by the U.S. Department of the Treasury.

(b) All forms of performance bonds must:

(1) Indicate on their face that BIA approval is required for redemption;

(2) Be accompanied by a statement granting full authority to BIA to make an immediate claim upon or sell them if the lessee violates the lease;

(3) Be irrevocable during the term of the performance bond; and

(4) Be automatically renewable during the term of the lease.

§ 162.436 What is the bond release process under a business lease?

(a) Upon expiration, termination, or cancellation of the lease, the lessee may submit a written request for a performance bond release to BIA.

(b) Upon receipt of a request under paragraph (a) of this section, BIA will confirm with the tribe, for tribal land or, where feasible, with the Indian landowners for individually owned Indian land, that the lessee has complied with all lease obligations, then release the performance bond to the lessee, unless we determine that the bond must be redeemed to fulfill the contractual obligations.

§ 162.437 Must a lessee provide insurance for a business lease?

Except as provided in paragraph (c) of this section, a lessee must provide insurance necessary to protect the interests of the Indian landowners and in the amount sufficient to protect all insurable improvements on the premises, unless otherwise provided in the lease.

(a) Such insurance may include property, crop, liability and/or casualty insurance, depending on the Indian landowners' interests to be protected.

(b) Both the Indian landowners and the United States must be identified as additional insured parties.

(c) We may waive the requirement for insurance upon the request of the Indian landowner, if a waiver is in the best interest of the Indian landowner, including if the lease is for less than fair market rental or nominal compensation. We may revoke the waiver and require insurance at any time if the waiver is no longer in the best interest of the Indian landowner.

Approval

§ 162.438 What documents must the parties submit to obtain BIA approval of a business lease?

A lessee or the Indian landowner must submit the following documents to us to obtain BIA approval of a business lease:

(a) A lease executed by the Indian landowner and the lessee that complies with the requirements of this part;

(b) An appraisal or other valuation under § 162.421, if appropriate;

(c) Organizational documents, certificates, filing records, and resolutions or other authorization documents, including evidence of the representative's authority to execute a lease, if the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, to show that the lease will be enforceable and that the legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located;

(d) A performance bond, where required:

(e) Statement from appropriate tribal authority that the proposed use is in conformance with applicable tribal law;

(f) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements;

(g) A restoration and reclamation plan (and any subsequent modifications to the plan), if appropriate;

(h) Documents that demonstrate the lessee's technical capability to construct, operate, maintain, and terminate the proposed project and the lessee's history in successfully designing, constructing, or obtaining the funding for a project similar to the proposed project, if appropriate;

(i) A preliminary plan of development that describes the type and location of any improvements the lessee plans to construct and a schedule showing the tentative commencement and completion dates for those improvements, if appropriate;

(j) An official or a certified survey of the leased premises that includes the legal description of the land encumbered by the lease and a description of each tract of trust or restricted land in the lease and the acreage of each. We will review the survey under the DOI Standards for Indian Trust Land Boundary Evidence;

(k) Information to assist us in our evaluation of the factors in 25 U.S.C. 415(a); and

(l) Any additional documentation we determine to be reasonably necessary for approval.

§ 162.439 What is the approval process for a business lease?

(a) Before we approve a business lease, we must determine that the lease is in the best interest of the Indian landowners. In making that determination, we will:

(1) Review the lease and supporting documents;

(2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances;

(3) Assure ourselves that adequate consideration has been given to the factors in 25 U.S.C. 415(a).

(4) Require any lease modifications or mitigation measures necessary to satisfy any requirements including any other Federal or tribal land use requirements; and

(5) If the lease is a negotiated lease, defer to the Indian landowners' determination that the lease is in their best interest, to the maximum extent possible.

(b) When we receive a business lease and all of the supporting documents that conform to this part, we will, within 60 days of the date of receipt of the documents at the appropriate BIA office, approve, disapprove, return the submission for revision, or notify the parties in writing that we need additional time to review the lease. Our letter notifying the parties that we need additional time to review the lease must identify our initial concerns and invite

the parties to respond within 15 days. We have 30 days from sending the notification to make a determination whether to approve or disapprove the sublease.

(c) If we fail to the deadlines in this section, then the parties may take appropriate action under part 2 of this chapter.

(d) Any lease approval or disapproval determination and the basis for the determination, along with notification of appeal rights under part 2 of this chapter, will be made in writing and will be sent to the parties to the lease.

(e) We will provide approved business leases on tribal land to the lessee and provide a copy to the tribe. We will provide approved business leases on individually owned Indian land to the lessee, and make copies available to the Indian landowners upon written request.

§ 162.440 When will a business lease be effective?

(a) A business lease will be effective on the date on which we approve the lease, notwithstanding any appeal that may be filed under part 2 of this chapter.

(b) The lease may specify a date on which the obligations between the parties to a business lease are triggered. Such date may be before or after the approval date under paragraph (a) of this section.

§ 162.441 Must business lease documents be recorded?

(a) A business lease, amendment, assignment, leasehold mortgage, and sublease must be recorded in our Land Titles and Records Office with jurisdiction over the leased land.

(1) We will record the lease or other document immediately following our approval.

(2) If our approval is not required, the parties must record the assignment or sublease in the Land Title and Records Office with jurisdiction over the leased land.

(b) The tribe must record the following leases in the Land Title and Records Office with jurisdiction over the leased lands, even though BIA approval is not required:

(1) Leases of tribal land a corporate entity leases to a third party under 25 U.S.C. 477; and

(2) Leases of tribal land under a special act of Congress authorizing leases without our approval under certain conditions.

§ 162.442 What action may BIA take if a lease disapproval decision is appealed?

(a) If a party appeals our decision to disapprove a lease, assignment, amendment, sublease or leasehold mortgage, then the official to whom the appeal is made may require the lessee to post an appeal bond in an amount necessary to protect the Indian landowners against financial losses and damage to trust resources likely to result from the delay caused by an appeal. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this chapter.

(b) The appellant may not appeal the appeal bond decision. The appellant may, however, request that the official to whom the appeal is made reconsider the bond decision, based on extraordinary circumstances. Any reconsideration decision is final for the Department.

Amendments

§ 162.443 May the parties amend a business lease?

(a) The parties may amend a business lease by obtaining:

(1) The lessee's signature;

(2) The Indian landowners' consent pursuant to the requirements contained in § 162.444; and

(3) BIA approval of the amendment under § 162.445 and § 162.446.

(b) The parties may not amend a business lease if the lease expressly prohibits amendments.

§ 162.444 What are the consent requirements for an amendment to a business lease?

(a) The Indian landowners, or their representatives under § 162.012, must consent to an amendment in the same percentages and manner as a new business lease pursuant to § 162.011, unless the requirements in paragraphs (a)(1) or (a)(2) of this section are met.

(1) The approved business lease establishes that individual Indian landowners are deemed to have consented where they do not object in writing to the amendment after a specified period of time following landowners' receipt of the amendment. If the lease provides for deemed consent, it must require the parties to submit to us: A copy of the executed amendment or other documentation of the Indian landowners' consent; proof of mailing of the amendment to any Indian landowners who are deemed to have consented; and any other pertinent information for us to review.

(2) The approved business lease authorizes one or more representatives to consent to an amendment on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to an amendment.

(b) Unless specifically authorized in the lease, the written power of attorney, or court document, Indian landowners may not be deemed to have consented, and an Indian landowner's designated representative may not negotiate or consent to an amendment that would:

(1) Reduce the payment obligations or terms to the Indian landowners;

(2) Increase or decrease the lease area; or

(3) Terminate or change the term of the lease.

§ 162.445 What is the approval process for an amendment to a business lease?

We have 30 days from receipt of the executed amendment, proof of required consents, and required documentation to make a determination whether to approve the amendment or notify the parties in writing that we need additional time to review the amendment.

(a) Our letter notifying the parties that we need additional time to review the amendment must identify our initial concerns and invite the parties to respond within 15 days. We have 30 days from sending the notification to make a determination whether to approve or disapprove the amendment.

(b) If we fail to send either a determination or a notification within 30 days from receipt of required documents and completion of environmental reviews or 30 days from sending the notification, the amendment is deemed approved to the extent consistent with Federal law. We will retain our full enforcement authority for amendments that are deemed approved.

(c) Our determination whether to approve the amendment will be in writing and will state the basis for our approval or disapproval.

§ 162.446 How will BIA decide whether to approve an amendment to a business lease?

(a) We may only disapprove a business lease amendment if:

(1) The required consents have not been obtained from the parties to the lease and any mortgagees or sureties;

(2) The lessee is in violation of the lease; or

(3) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) We may not unreasonably withhold approval of an amendment.

Assignments

§ 162.447 May a lessee assign a business lease?

(a) A lessee may assign a business lease by meeting the consent

requirements contained in § 162.448 and obtaining our approval of the assignment under § 162.449 and § 162.450, or by meeting the conditions in paragraphs (b) or (c) of this section, unless the lease expressly prohibits assignments.

(b) Where provided in the lease, the lessee may assign the lease to the following without meeting consent requirements or obtaining BIA approval of the assignment, as long as the lessee notifies BIA of the assignment within 30 days:

(1) Not more than two distinct legal entities specified in the lease; or

(2) The lessee's wholly owned subsidiaries.

(c) If a sale or foreclosure under an approved mortgage of the leasehold interest occurs and the mortgagee is the purchaser, the mortgagee/purchaser may assign the leasehold interest without meeting the consent requirements or obtaining BIA approval, as long as the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease.

§ 162.448 What are the consent requirements for an assignment of a business lease?

(a) The Indian landowners, or their representatives under § 162.012, must consent to an assignment of a business lease in the same percentages and manner as a new business lease pursuant to § 162.011, unless the requirements in paragraphs (a)(1) or (a)(2) of this section are met.

(1) The approved business lease establishes that individual Indian landowners are deemed to have consented where they do not object in writing to the assignment after a specified period of time following landowners' receipt of the assignment. If the lease provides for deemed consent, it must require the parties to submit to us: A copy of the executed assignment or other documentation of the Indian landowners' consent; proof of mailing to any Indian landowners who are deemed to have consented; and any other pertinent information to us for review.

(2) The approved business lease authorizes one or more representatives to consent to an assignment on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to an assignment.

(b) The lessee must obtain the consent of the holders of any bonds or mortgages.

§ 162.449 What is the approval process for an assignment of a business lease?

(a) We have 30 days from receipt of the executed assignment, proof of required consents, and required documentation to make a determination whether to approve the assignment or notify the parties that we need additional information. Our determination whether to approve the assignment will be in writing and will state the basis for our approval or disapproval.

(b) If we fail to meet the deadline in this section, the lessee or Indian landowners may take appropriate action under part 2 of this chapter.

§ 162.450 How will BIA decide whether to approve an assignment of a business lease?

(a) We may only disapprove an assignment of a business lease if:

(1) The required consents have not been obtained from the parties to the lease or the lessee's mortgagees or sureties;

(2) The lessee is in violation of the lease;

(3) The assignee does not agree to be bound by the terms of the lease; or

(4) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(4) of this section, we may consider whether:

(1) The value of any part of the leased premises not covered by the assignment would be adversely affected; and

(2) If a performance bond is required, the assignee has bonded its performance and provided supporting documents that demonstrate that the lease will be enforceable against the assignee, and that the assignee will be able to perform its obligations under the lease or assignment.

(c) We may not unreasonably withhold approval of an assignment.

Subleases

§ 162.451 May a lessee sublease a business lease?

(a) A lessee may sublease a business lease by meeting the consent requirements contained in § 162.452 and obtaining our approval of the sublease under § 162.453 and § 162.454, or by meeting the conditions in paragraph (b) of this section, unless the lease expressly prohibits subleases.

(b) Where the sublease is part of a commercial development or residential development, the lessee may sublease without meeting consent requirements or obtaining BIA approval of the sublease, as long as:

(1) The lease provides for subleasing without meeting consent requirements or obtaining BIA approval;

(2) We have approved a general plan and rent schedule for the development;

(3) We have approved a sublease form for use in the project; and

(4) The parties provide BIA with a copy of the executed sublease within 30 days.

§ 162.452 What are the consent requirements for a sublease of a business lease?

The Indian landowners must consent to a sublease of a business lease in the same percentages and manner as a new business lease under § 162.011, unless the requirements in paragraphs (a) or (b) of this section are met.

(a) The lease establishes that individual Indian landowners are deemed to have consented where they do not object in writing to the sublease after a specified period of time following landowners' receipt of the sublease. If the lease provides for deemed consent, it must require the parties to submit to us: A copy of the executed sublease or other documentation of the Indian landowners' consent; proof of mailing of the sublease to any Indian landowners who are deemed to have consented; and any other pertinent information for us to review.

(b) The lease authorizes one or more representatives to consent to a sublease on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to a sublease.

§ 162.453 What is the approval process for a sublease of a business lease?

BIA has 30 days from receipt of the executed sublease, proof of required consents, and required documentation to make a determination whether to approve the sublease or notify the parties in writing that we need additional time to review the sublease.

(a) Our letter notifying the parties that we need additional time to review the sublease must identify our initial concerns and invite the parties to respond within 15 days. We have 30 days from sending the notification to make a determination whether to approve or disapprove the sublease.

(b) If we fail to send either a determination or a notification within 30 days from receipt of required documents or 30 days from sending the notification, the sublease is deemed approved to the extent consistent with Federal law. We will retain our full enforcement authority for subleases that are deemed approved.

§ 162.454 How will BIA decide whether to approve a sublease of a business lease?

(a) We may only disapprove a sublease of a business lease if:

(1) The required consents have not been obtained from the parties to the lease and any mortgagees or sureties;

(2) The lessee is in violation of the lease;

(3) The lessee will not remain liable under the lease;

(4) The sublessee does not agree to be bound by the terms of the lease; or

(5) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding requirement by paragraph (a)(5) of this section, we will consider whether:

(1) The value of any part of the leased premises not covered by the sublease would be adversely affected; and

(2) If a performance bond is required by the sublease, the sublessee has bonded its performance and provided supporting documents that demonstrate that the lease will be enforceable by the lessee against the sublessee, and that the sublessee will be able to perform its obligations under the lease.

(c) We may not unreasonably withhold approval of a sublease.

Leasehold Mortgages

§ 162.455 May a lessee mortgage a business lease?

(a) A lessee may mortgage a business lease by meeting the consent requirements contained in § 162.456 and obtaining our approval of the leasehold mortgage under § 162.457 and § 162.458, unless the lease expressly prohibits leasehold mortgages.

(b) Refer to § 162.447(c) for information on what happens if a sale or foreclosure under an approved mortgage of the leasehold interest occurs.

§ 162.456 What are the consent requirements for a leasehold mortgage under a business lease?

The Indian landowners, or their representatives under § 162.012, must consent to a leasehold mortgage under a business lease in the same percentages and manner as a new business lease under § 162.011, unless the requirements in paragraphs (a), (b), or (c) of this section are met.

(a) The lease contains a general authorization for a leasehold mortgage and states what law would apply in case of foreclosure.

(b) The lease establishes that individual Indian landowners are deemed to have consented where they do not object in writing to the leasehold mortgage after a specified period of time following landowners' receipt of the leasehold mortgage. If the lease provides for deemed consent, it must require the parties to submit to us: A copy of the executed leasehold mortgage or other documentation of the Indian landowners' consent; proof of mailing of the leasehold mortgage to any Indian landowners who are deemed to have consented; and any other pertinent information for us to review.

(c) The lease authorizes one or more representatives to consent to a leasehold mortgage on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to a leasehold mortgage.

§ 162.457 What is the approval process for a leasehold mortgage under a business lease?

(a) We have 30 days from receipt of the executed leasehold mortgage, proof of required consents, and required documentation to make a determination whether to approve the leasehold mortgage or notify the parties in writing that we need additional time to review the leasehold mortgage. Our determination whether to approve the leasehold mortgage will be in writing and will state the basis for our approval or disapproval.

(b) If we fail to meet the deadline in this section, the lessee may take appropriate action under part 2 of this chapter.

§ 162.458 How will BIA decide whether to approve a leasehold mortgage under a business lease?

(a) We may only disapprove a leasehold mortgage under a business lease if:

(1) The required consents have not been obtained from the parties to the lease and the lessee's sureties;

(2) The leasehold mortgage covers more than the lessee's interest in the leased premises or encumbers unrelated collateral; or

(3) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(3) of this section, we will consider whether:

(1) The lessee's ability to comply with the lease would be adversely affected by any new loan obligations;

(2) Any lease provisions would be modified by the leasehold mortgage;

(3) The remedies available to us or to the Indian landowners would be limited (beyond any additional notice and cure rights to be afforded to the mortgagee), in the event of a lease violation; and

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a loan default by the lessee.

(c) We may not unreasonably withhold approval of a leasehold mortgage.

Effectiveness, Compliance, and Enforcement

§ 162.459 When will an amendment, assignment, sublease, or leasehold mortgage under a business lease be effective?

(a) An amendment, assignment, sublease, or leasehold mortgage under a business lease will be effective when approved, notwithstanding any appeal that may be filed under part 2 of this chapter, unless approval is not required under § 162.008(b), § 162.447(b), or § 162.451(b), or the conditions in paragraph (b) of this section apply. We will provide the approved documents to the party requesting approval and, upon request, to the other parties to the agreement.

(b) If the amendment or sublease was deemed approved pursuant to § 162.445(b) or § 162.453(b), the amendment or sublease becomes effective 45 days from the date the parties mailed or delivered the document to us for our review.

(c) An assignment or sublease that does not require landowner consent or BIA approval shall be effective upon execution by the parties.

§ 162.460 What happens if BIA disapproves an amendment, assignment, sublease, or leasehold mortgage under a business lease?

If we disapprove an amendment, assignment, sublease, or leasehold mortgage of a business lease, we will notify the parties immediately and advise them of their right to appeal the decision under part 2 of this chapter.

§ 162.461 May BIA investigate compliance with a business lease?

(a) We may enter the leased premises at any reasonable time, upon reasonable notice, to protect the interests of the Indian landowners and to determine if the lessee is in compliance with the requirements of the lease.

(b) If the Indian landowner notifies us that a specific lease violation has occurred, we will promptly initiate an appropriate investigation.

§ 162.462 May a business lease provide for negotiated remedies in the event of a violation?

(a) A business lease of tribal land may provide either or both parties with negotiated remedies in the event of a lease violation, including, but not

limited to, the power to terminate the lease. If the lease provides the parties with the power to terminate the lease, BIA approval of the termination is not required and the termination is effective without BIA cancellation. The parties must notify us of the termination so that we may record it in the Land Titles and Records Office.

(b) A business lease of individually owned Indian land may provide either or both parties with negotiated remedies, so long as the lease also specifies the manner in which those remedies may be exercised by or on behalf of the applicable percentage of Indian landowners under § 162.011 of this part. If the lease provides the parties with the power to terminate the lease, BIA concurrence with the termination is required to ensure that the Indian landowners of the applicable percentage of interests have consented. BIA will record the termination in the Land Titles and Records Office.

(c) The parties must notify any surety or mortgagee of a termination of a business lease.

(d) Negotiated remedies may apply in addition to, or instead of, the cancellation remedy available to us, as specified in the lease.

(e) A business lease may provide for lease disputes to be resolved in tribal court or any other court of competent jurisdiction, by a tribal governing body in the absence of a tribal court, or through an alternative dispute resolution method. We may not be bound by decisions made in such forums, but we will defer to ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us.

§ 162.463 What will BIA do about a violation of a business lease?

(a) If we determine there has been a violation of the conditions of a business lease, other than a violation of payment provisions covered by paragraph (b) of this section, we will promptly send the lessee and its sureties and any mortgagee a notice of violation by certified mail, return receipt requested.

(1) We will send a copy of the notice of violation to the tribe for tribal land, or provide constructive notice to Indian landowners for individually owned Indian land.

(2) Within 10 business days of the receipt of a notice of violation, the lessee must:

(i) Cure the violation and notify us in writing that the violation has been cured;

(ii) Dispute our determination that a violation has occurred; or

(iii) Request additional time to cure the violation.

(3) If a violation is determined to have occurred, we will make a reasonable attempt to notify the Indian landowners.

(4) We may order the lessee to stop work.

(b) A lessee's failure to pay compensation in the time and manner required by a residential lease is a violation of the lease, and we will issue a notice of violation in accordance with this paragraph.

(1) We will send the lessees and its sureties a notice of violation by certified mail, return receipt requested:

(i) Promptly following the date on which the payment was due, if the lease requires that payments be made to us; or

(ii) Promptly following the date on which we receive actual notice of non-payment from the Indian landowners, if the lease provides for payment directly to the Indian landowners.

(2) We will send a copy of the notice of violation to the tribe for tribal land, or provide constructive notice to the Indian landowners for individually owned Indian land.

(3) The lessee must provide adequate proof of payment as required in the notice of violation.

(c) The lessee and its sureties will continue to be responsible for the obligations contained in the lease until the lease is terminated, cancelled, or expires.

§ 162.464 What will BIA do if the lessee does not cure a violation of a business lease on time?

(a) If the lessee does not cure a violation of a business lease within the requisite time period, or provide adequate proof of payment as required in the notice of violation, we will consult with the tribe for tribal land or, where feasible, Indian landowners for individually owned Indian land, and determine whether:

(1) We should cancel the lease;

(2) The Indian landowners wish to invoke any remedies available to them under the lease;

(3) We should invoke other remedies available under the lease or applicable law, including, collection on any available performance bond or, for failure to pay compensation, referral of the debt to the Department of the Treasury for collection; or

(4) The lessee should be granted additional time in which to cure the violation.

(b) We may take action to recover unpaid compensation and any associated late payment charges.

(1) We do not have to cancel the lease or give any further notice to the lessee before taking action to recover unpaid compensation.

(2) We may still take action to recover any unpaid compensation if we cancel the lease.

(c) If we decide to cancel the lease, we will send the lessee and its sureties and any mortgagees a cancellation letter by certified mail, return receipt requested, within 5 business days of our decision. We will send a copy of the cancellation letter to the tribe for tribal land, and will provide Indian landowners for individually owned Indian land with actual or constructive notice of the cancellation. The cancellation letter will:

(1) Explain the grounds for cancellation;

(2) If applicable, notify the lessee of the amount of any unpaid compensation or late payment charges due under the lease;

(3) Notify the lessee of their right to appeal under part 2 of this chapter, including the possibility that the official to whom the appeal is made may require the lessee to post an appeal bond;

(4) Order the lessee to vacate the property within 31 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and

(5) Require any other action BIA deems necessary to protect the Indian landowners.

(d) We may invoke any other remedies available to us under the lease, including collecting on any available performance bond, and the Indian landowner may pursue any available remedies under tribal law.

§ 162.465 Will late payment charges or special fees apply to delinquent payments due under a business lease?

(a) Late payment charges will apply as specified in the lease. The failure to pay such amounts will be treated as a lease violation.

(b) The following special fees may be assessed to cover administrative costs incurred by the United States in the collection of the debt, if compensation is not paid in the time and manner required, in addition to the late payment charges that must be paid to the Indian landowners under the lease:

The lessee will pay . . .	For . . .
(a) $50.00	Dishonored checks.
(b) $15.00	Processing of each notice or demand letter.
(c) 18 percent of balance due.	Treasury processing following referral for collection of delinquent debt.

§ 162.466 How will payment rights relating to a business lease be allocated between the Indian landowners and the lessee?

The business lease may allocate rights to payment for insurance proceeds, trespass damages, condemnation awards, settlement funds, and other payments between the Indian landowners and the lessee. If not specified in the insurance policy, order, award, judgment, or other document including the lease, the Indian landowners or lessees will be entitled to receive such payments.

§ 162.467 When will a cancellation of a business lease be effective?

(a) A cancellation involving a business lease will not be effective until 31 days after the lessee receives a cancellation letter from us, or 41 days from the date we mailed the letter, whichever is earlier.

(b) The cancellation decision will be stayed if an appeal is filed unless the cancellation is made immediately effective under part 2 of this chapter. While a cancellation decision is stayed, the lessee must continue to pay compensation and comply with the other terms of the lease.

§ 162.468 What will BIA do if a lessee remains in possession after a business lease expires or is cancelled?

If a lessee remains in possession after the expiration or cancellation of a business lease, we may treat the unauthorized possession as a trespass under applicable law. Unless the applicable percentage of Indian landowners under § 162.011 have notified us in writing that they are engaged in good faith negotiations with the holdover lessee to obtain a new lease, we may take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law, such as forcible entry and detainer action.

§ 162.469 Will BIA regulations concerning appeal bonds apply to cancellation decisions involving business leases?

(a) Except as provided in paragraph (b) of this section, the appeal bond provisions in part 2 of this chapter will apply to appeals from lease cancellation decisions.

(b) The lessee may not appeal the appeal bond decision. The lessee may, however, request that the official to whom the appeal is made reconsider the appeal bond decision, based on extraordinary circumstances. Any reconsideration decision is final for the Department.

§ 162.470 When will BIA issue a decision on an appeal from a business leasing decision?

BIA will issue a decision on an appeal from a business leasing decision within 60 days of receipt of all pleadings.

§ 162.471 What happens if the lessee abandons the leased premises?

If a lessee abandons the leased premises, we will treat the abandonment as a violation of the lease. The lease may specify a period of non-use after which the lease premises will be considered abandoned.

14. Remove subpart F in its entirety (§ 162.600–§ 162.623) and redesignate § 162.500–§ 162.503 in subpart E as § 162.600–§ 162.603 in subpart F under the following heading:

Subpart F—Special Requirements for Certain Reservations

15. Add a new subpart E to read as follows:

Subpart E—Wind and Solar Resource Leases

General Provisions Applicable to Both WEELs and WSR Leases

Sec.

WEELs

Monetary Compensation Requirements

Bonding and Insurance

Approval

Administration

Compliance and Enforcement

WSR Leases

Monetary Compensation Requirements

Bonding and Insurance

Subpart E—Wind and Solar Resource Leases

General Provisions Applicable to WEELs and WSR Leases

§ 162.501 What types of leases does this subpart cover?

(a) This subpart covers:

(1) Wind energy evaluation leases (WEELs), which are short-term leases that authorize possession of Indian land for the purpose of installing, operating, and maintaining instrumentation, and associated infrastructure, such as meteorological towers, to evaluate wind resources for electricity generation; and

(2) Wind and solar resource (WSR) leases, which are leases that authorize possession of Indian land for the purpose of installing, operating, and maintaining instrumentation, facilities, and associated infrastructure, such as wind turbines and solar panels, to harness wind and/or solar energy to generate and supply electricity:

(i) For resale on a for-profit or non-profit basis;

(ii) To a utility grid serving the public generally; or

(iii) To users within the local community (*e.g.,* on and adjacent to a reservation).

(b) If the generation of electricity is solely to support a use approved under subpart B, Agricultural Leases; subpart C, Residential Leases; or subpart D Business Leases (including religious, educational, recreational, cultural, or other public purposes), for the same parcel of land, then the installation, operation, and maintenance of instrumentation, facilities, and associated infrastructure are governed by subpart B, C, or D, as appropriate.

§ 162.502 Who must obtain a WEEL or WSR lease?

(a) Except as provided in § 162.008(b) and 162.501, anyone seeking to possess Indian land to conduct activities associated with the evaluation of wind resources must obtain a WEEL.

(b) Except as provided in § 162.008(b) and 162.501, anyone seeking to possess Indian land to conduct activities associated with the development of wind and/or solar resources must obtain a WSR lease.

(c) A tribe that conducts wind and solar resource activities on its tribal land does not need a WEEL or WSR under this subpart.

§ 162.503 Is there a model WEEL or WSR lease?

There is no model WEEL or WSR lease because of the need for flexibility in negotiating and writing WEELs and WSR leases; however, we may provide other guidance, such as checklists and a sample lease to assist in the lease negotiation process. Additionally, we may assist the Indian landowners, upon their request, in developing appropriate lease provisions or in using tribal lease forms that conform to the requirements of this part.

WEELs

§ 162.511 What is the purpose of a WEEL?

A WEEL is a short-term lease that allows the lessee to use trust or restricted lands for the purpose of evaluating wind resources. The lessee may use information collected under the WEEL to assess the potential for wind energy development, and determine future placement and type of wind energy technology to use in developing the energy resource potential of the leased area.

§ 162.512 How long may the term of a WEEL run?

(a) A WEEL must provide for a definite term, state if there is an option to renew and, if so, provide for a definite term for the renewal period. WEELs are for project evaluation purposes, and therefore may have:

(1) An initial term that is no longer than 3 years; and

(2) One renewal period not to exceed 3 years.

(b) The exercise of the option to renew must be in writing and the WEEL must specify:

(1) The time and manner in which the option must be exercised; and

(2) Additional consideration, if any, that will be due upon the exercise of the option to renew or the commencement of the renewal term.

§ 162.513 Are there mandatory provisions a WEEL must contain?

(a) All WEELs must identify:

(1) The tract or parcel of land being leased;

(2) The purpose of the WEEL and authorized uses of the leased premises;

(3) The parties to the WEEL;

(4) The term of the WEEL;

(5) The owner being represented and the authority under which such action is being taken, where one executes the WEEL in a representative capacity;

(6) The citation of the statute that authorizes our approval;

(7) Who is responsible for constructing, owning, operating, maintaining, and managing improvements, pursuant to § 162.515;

(8) Payment requirements and late payment charges, including interest; and

(9) Due diligence requirements, pursuant to § 162.517;

(b) All WEELs must include the provisions:

(1) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of leased premises;

(2) The obligations of the lessee and its sureties to the Indian landowners are also enforceable by the United States, so long as the land remains in trust or restricted status;

(3) Nothing in the lease would prevent or delay termination of Federal trust responsibilities for the land during the lease's term;

(4) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under § 162.013;

(5) The lessee indemnifies and holds the United States and the Indian landowners harmless from any loss, liability, or damages resulting from the lessee's use of the leased premises, unless the lessee would be prohibited by law from making such an agreement;

(6) In the event that historic properties, archeological resources, human remains, or other cultural items, not previously reported are encountered during the course of any activity associated with this lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease, and the lessee will contact BIA and the tribe that has jurisdiction to determine how to proceed and appropriate disposition; and

(7) BIA has the right, at any reasonable time during the term of the lease, and upon reasonable notice, to enter upon the leased premises for inspection.

§ 162.514 May improvements be made under a WEEL?

(a) A WEEL anticipates the installation of facilities and associated infrastructure of a size and magnitude necessary for evaluation of wind resource capacity and potential effects of development. These facilities and associated infrastructure are considered improvements. An equipment installation plan must be submitted with the lease pursuant to § 162.528(f).

(b) If any of the following changes are made to the equipment installation plan, the Indian landowners must approve the revised plan and the lessee must provide a copy of the revised plan to BIA:

(1) Location of improvements;

(2) Type of improvements; or

(3) Delay of 90 days or more in any phase of development.

§ 162.515 How must a WEEL address ownership of improvements?

(a) A WEEL must specify who will own any improvements the lessee installs during the lease term. In addition, the WEEL must indicate whether any improvements the lessee installs:

(1) Will remain on the premises upon expiration or termination of the lease whether or not there is conversion of the WEEL to a WSR lease, in a condition satisfactory to the Indian landowners;

(2) May be conveyed to the Indian landowners during the WEEL term;

(3) Will be removed within a time period specified in WEEL, at the lessee's expense, with the leased premises to be restored as close as possible to their condition before installation of such improvements; or

(4) Will be disposed of by other specified means.

(b) A WEEL that requires the lessee to remove the improvements must also provide the Indian landowners with an option to take possession and title to the improvements if the improvements are not removed within the specified time period.

(c) Any permanent improvements on the leased land shall be subject to 25 CFR 1.4 and, in addition, shall not be subject to any fee, tax, assessment, levy, or other such charge imposed by any State or political subdivision of a State, without regard to ownership of those improvements. Improvements may be subject to taxation by the Indian tribe with jurisdiction.

§ 162.516 How will BIA enforce removal requirements in a WEEL?

We may take appropriate enforcement action in consultation with the tribe for tribal land or, where feasible, Indian landowners for individually owned Indian land, to ensure removal of the improvements or restoration of the premises at the lessee's expense. We may take such enforcement action after termination or expiration of the WEEL.

§ 162.517 What requirements for due diligence must a WEEL include?

(a) A WEEL must require the lessee to undertake the following due diligence:

(1) Install testing and monitoring facilities within 12 months after the effective date of the WEEL or other period designated in the WEEL and consistent with the plan of development; and

(2) Provide the Indian landowners and BIA with an explanation as to good cause for any delay, the anticipated date of installation of facilities, and evidence of progress toward installing or completing testing and monitoring facilities, if installation does not occur, or is not expected to be completed, within the time period specified in paragraph (a)(1) of this section.

(b) Failure of the lessee to comply with the due diligence requirements of the WEEL is a violation of the WEEL and may lead to cancellation of the WEEL and the requirement that the lessee transfer of ownership of energy resource information collected under the WEEL to the Indian landowner under § 162.519.

§ 162.518 May a WEEL allow for compatible uses by the Indian landowner?

The WEEL may provide for the Indian landowner to use the leased premises for other noncompeting uses compatible with the purpose of the WEEL. This may include the right to lease the premises for other compatible purposes. Any such use by the Indian landowner will not reduce or offset the monetary compensation for the WEEL.

§ 162.519 Who owns the energy resource information obtained under the WEEL?

(a) The WEEL must specify the ownership of any energy resource information the lessee obtains during the WEEL term.

(b) Unless otherwise specified in the WEEL, the energy resource information the lessee obtains through the leased activity becomes the property of Indian landowner at the termination or expiration of the WEEL or upon failure by the lessee to diligently install testing and monitoring facilities on the leased premises in accordance with § 162.517.

(c) BIA will keep confidential any information it is provided that is marked confidential or proprietary and that is exempt from public release, to the extent allowed by law.

§ 162.520 May a lessee incorporate its WEEL analyses into its WSR lease analyses?

Any analyses a lessee uses to bring a WEEL activity into compliance with applicable laws, ordinances, rules, regulations under § 162.013 and any

other legal requirements may be incorporated by reference, as appropriate, into the analyses of a proposed WSR lease.

§ 162.521 May a WEEL contain an option for the lessee to enter into a WSR lease?

(a) A WEEL may provide for an option period following the expiration of the WEEL term during which time the lessee and the Indian landowner have the option to enter into a WSR lease if:

(1) The option period is no more than 3 years, except as provided in § 162.522;

(2) The intent to install energy resource development facilities is stated at the time of the initial WEEL application;

(3) The WSR lease will be limited to the land covered by the WEEL, or a portion thereof;

(4) The WEEL imposes due diligence requirements on the lessee;

(5) The WEEL states the circumstances in which the option period may be terminated; and

(6) The WSR lease will be the direct result of energy resource information gathered from the WEEL activities and associated data.

(b) Our approval of a WEEL that contains an option to enter into a WSR lease does not guarantee or imply our approval of any WSR lease.

§ 162.522 How may a lessee obtain an extension of an option period?

(a) A lessee may request extension of the option period for a term of no more than 3 years.

(b) We will approve the extension if:

(1) The parties agree in writing to the extension and have already submitted a proposed WSR lease to us for approval; and

(2) The extension is necessary for us to complete the lease approval process.

Monetary Compensation Requirements

§ 162.523 How much compensation must be paid under a WEEL?

(a) The WEEL must state how much compensation will be paid.

(b) A WEEL must specify the date on which compensation will be due.

(c) Failure to make timely payments is a violation of the WEEL and may lead to cancellation of the WEEL.

(d) The lease compensation requirements of §§ 162.549 through 162.555, also apply to WEELs.

§ 162.524 Will BIA require a valuation for a WEEL?

BIA will not require a valuation for a WEEL.

Bonding and Insurance

§ 162.525 Must a lessee provide a performance bond for a WEEL?

The lessee is not required to provide a performance bond for a WEEL.

§ 162.526 [Reserved].

§ 162.527 Must a lessee provide insurance for a WEEL?

Except as provided in paragraph (d) of this section, a lessee must provide insurance necessary to protect the interests of Indian landowners and in the amount sufficient to protect all insurable improvements on the leased premises, unless otherwise provided in the WEEL.

(a) Such insurance may include property, crop, liability and/or casualty insurance, depending on the Indian landowners' interests to be protected.

(b) Both the Indian landowners and the United States must be identified as additional insured parties.

(c) Lease insurance may be increased and extended for use as the required WSR lease insurance.

(d) We may waive the requirement for insurance upon the request of the Indian landowner, if a waiver is in the best interest of the Indian landowner, including if the lease is for less than fair market rental or nominal compensation. We may revoke the waiver and require insurance at any time if the waiver is no longer in the best interest of the Indian landowner.

Approval

§ 162.528 What documents must the parties submit to obtain BIA approval of a WEEL?

A lessee or the Indian landowner must submit the following documents to us to obtain BIA approval of a WEEL:

(a) A WEEL executed by the Indian landowners and the lessee that complies with the requirements of this part;

(b) Organizational documents, certificates, filing records, and resolutions or other authorization documents, including evidence of the representative's authority to execute a lease, if the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, to show that the WEEL will be enforceable and that the legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located;

(c) Proof of insurance, as required by § 162.527;

(d) Statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law;

(e) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance with applicable Federal and tribal environmental and land use requirements;

(f) An equipment installation plan;

(g) A restoration and reclamation plan (and any subsequent modifications to the plan);

(h) An official or certified survey of the leased premises that includes the legal description of the land encumbered by the WEEL and a description of each tract of trust or restricted land in the WEEL and the acreage of each. We will review the survey under the DOI Standards for Indian Trust Land Boundary Evidence;

(i) Documents that demonstrate the technical capability of the lessee or lessee's agent to construct, operate, maintain, and terminate resource evaluation facilities and history in successfully designing, constructing, or obtaining the funding for a resource evaluation project (for example, documents evidencing lessee's actual ownership, development, or management of a successful similar size project within the last 5 years);

(j) Information to assist us in our evaluation of the factors in 25 U.S.C. 415(a); and

(k) Any additional documentation we determine to be reasonably necessary for approval.

§ 162.529 What is the approval process for a WEEL?

(a) Before we approve a WEEL, we must determine that the WEEL is in the best interest of the Indian landowners. In making that determination, we will:

(1) Review the WEEL and supporting documents;

(2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances;

(3) Assure ourselves that adequate consideration has been given to the factors in 25 U.S.C. 415(a); and

(4) Require any lease modifications or mitigation measures necessary to satisfy any requirements including any other Federal or tribal land use requirements.

(b) When we receive a WEEL and all of the supporting documents that conform to this part, we will, within 20 days of the date of receipt of the documents at the appropriate BIA office, approve, disapprove, return the submission for revision, or notify the parties in writing that we need additional time to review the WEEL. Our letter notifying the parties that we need additional time to review the WEEL must identify our initial concerns

and invite the parties to respond within 15 days. We have 30 days from sending the notification to make a determination whether to approve or disapprove the sublease.

(c) If we fail to meet the deadline in this section, then the parties may take appropriate action under part 2 of this chapter.

(d) In reviewing a WEEL for approval, we will defer to the Indian landowners' determination that the WEEL is in their best interest, to the maximum extent possible.

(e) Any WEEL approval or disapproval determination and the basis for the determination, along with notification of rights to appeal the determination under part 2 of this chapter, will be made in writing and will be sent to the parties.

Administration

§ 162.530 May the parties amend, assign, sublease, or mortgage a WEEL?

The parties may amend, assign, sublease, or mortgage a WEEL by following the procedures and requirements for amending, assigning, subleasing, or mortgaging a WSR lease.

§ 162.531 [Reserved]

Compliance and Enforcement

§ 162.532 How does BIA ensure compliance with a WEEL?

(a) If we determine that a WEEL has been violated, we will promptly send the lessee and its sureties a notice of violation. We may also order the lessee to stop work. The notice of violation must be provided by certified mail, return receipt requested.

(b) Within 5 days of the receipt of the notice of violation, the lessee must:

(1) Cure the violation and notify us in writing that the violation has been cured;

(2) Dispute our determination that a violation has occurred; or

(3) Request additional time to cure the violation.

(c) If we determine that a violation has occurred, we will make a reasonable attempt to notify the Indian landowners.

§ 162.533 What will BIA do if a lessee does not cure a violation of a WEEL on time?

(a) If the lessee does not cure a violation of a WEEL within the requisite time period, we will consult with the tribe for tribal land or, where feasible, Indian landowners for individually owned Indian land, and determine whether:

(1) We should cancel the WEEL, or

(2) The Indian landowners wish to invoke any remedies available to them under the WEEL; or

(3) We should invoke any other remedies available to us under the WEEL.

(b) If we decide to cancel the WEEL, we will send the lessee and its sureties and any mortgagees a cancellation letter by certified mail, return receipt requested, within 5 business days of our decision. We will send a copy of the cancellation letter to the tribe for tribal land, and will provide Indian landowners for individually owned Indian land with actual or constructive notice of the cancellation. The cancellation letter will:

(1) Explain the grounds for cancellation;

(2) If applicable, notify the lessee of the amount of any unpaid compensation or late payment charges due under the WEEL;

(3) Notify the lessee of their right to appeal under part 2 of this chapter;

(4) Order the lessee to vacate the property within 31 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and

(5) Order the lessee to take any other action we deem necessary to protect the Indian landowners.

(c) The cancellation will not be effective until 31 days after the lessee receives a cancellation letter from us, or 41 days from the date the letter is mailed, whichever is earlier.

(d) The cancellation decision will be stayed if the lessee files an appeal unless the cancellation is made immediately effective under part 2 of this chapter. While a cancellation decision is stayed, the lessee must continue to pay compensation and comply with the other terms of the WEEL.

(e) Nothing in this part affects BIA's ability to take emergency action to protect the leased premises under § 162.021.

§ 162.534 Under what circumstances may a WEEL be terminated or cancelled?

(a) A WEEL must state whether, and under what conditions, an Indian landowner may terminate the WEEL.

(b) We may cancel the WEEL if we have determined cancellation is appropriate under § 162.523 (failure to make timely payments) or § 162.533 (failure to cure a violation within the requisite time).

WSR Leases

§ 162.535 What is the purpose of a WSR lease?

A WSR lease authorizes a lessee to possess Indian land to conduct activities related to the installation, operation, and maintenance of wind and/or solar energy resource development projects. Activities include installing instrumentation facilities, and infrastructure associated with the generation, transmission, and storage of electricity and other related activities.

§ 162.536 Must I obtain a WEEL before obtaining a WSR lease?

You may enter into a WSR lease independent of a WEEL. While you may enter into a lease as a direct result of energy resource information gathered from a WEEL activity, obtaining a WEEL is not a precondition to entering into a WSR lease.

§ 162.537 How long may the term of a WSR lease run?

(a) A WSR lease must provide for a definite lease term, state if there is an option to renew and, if so, provide for a definite term for the renewal period. Unless authorized by paragraph (b), leases for WSR development purposes may have an initial term not to exceed 25 years and one renewal period not to exceed 25 years.

(b) If a statute provides for a longer maximum term (*e.g.,* 25 U.S.C. 415(a) allows for a maximum term of 99 years for certain tribes), the lease may provide for a primary term, and one renewal not to exceed 25 years, so long as the maximum term, including the renewal, does not exceed the maximum term established by statute.

(c) The lease term, including any renewal, must be reasonable, given the

(1) Purpose of the lease;

(2) Type of financing; and

(3) Level of investment.

(d) Where all of the trust or restricted interests in a tract are owned by a deceased Indian whose heirs and devisees have not yet been determined, the maximum term may not exceed two years.

(e) The lease may not be extended by holdover.

§ 162.538 What must the lease include if it contains an option to renew?

(a) If the lease provides for an option to renew, the lease must specify:

(1) The time and manner in which the option must be exercised or is automatically effective;

(2) That confirmation of the renewal will be submitted to us;

(3) Whether Indian landowner consent to the renewal is required;

(4) That the lessee must provide notice to the Indian landowner and any mortgagees of the renewal;

(5) The additional consideration, if any, that will be due upon the exercise of the option to renew or the commencement of the renewal term; and

(6) That any change in the terms of the lease will be considered an amendment subject to consent and BIA approval requirements pursuant to §§ 162.568 to 162.571; and

(7) Any other conditions for renewal (*e.g.,* the lessee may not be in violation of the lease at the time of renewal).

(b) We must record any renewal of a lease in the Land Titles and Records Office.

§ 162.539 Are there mandatory provisions a WSR lease must contain?

(a) All WSR leases must identify:

(1) The tract or parcel of land being leased;

(2) The purpose of the lease and authorized uses of the leased premises;

(3) The parties to the lease;

(4) The term of the lease;

(5) The owner being represented and the authority under which such action is being taken, where one executes a lease in a representative capacity;

(6) The citation of the statute that authorizes our approval;

(7) Who is responsible for constructing, owning, operating, maintaining, and managing, WSR equipment, roads, transmission lines and related facilities;

(8) Who is responsible for evaluating the leased premises for suitability; purchasing, installing, operating, and maintaining WSR equipment; negotiating power purchase agreements; and transmission;

(9) Payment requirements and late payment charges, including interest;

(10) Due diligence requirements, pursuant to § 162.543;

(11) Insurance requirements; and

(12) Bonding requirements under § 162.559. If a performance bond is required, the lease must state that the lessee must obtain the consent of the surety or guarantor for any legal instrument that directly affects their obligations and liabilities.

(b) All WSR leases must include the following provisions:

(1) The obligations of the lessee and its sureties to the Indian landowners are also enforceable by the United States, so long as the land remains in trust or restricted status;

(2) Nothing in the lease would prevent or delay termination of Federal trust responsibilities for the land during the lease's term;

(3) There must not be any unlawful conduct, creation of a nuisance, illegal activity, or negligent use or waste of the leased premises;

(4) The lessee must comply with all applicable laws, ordinances, rules, regulations, and other legal requirements under § 162.013;

(5) The lessee indemnifies and holds the United States and the Indian landowners harmless from any loss, liability, or damages resulting from the lessee's use or occupation of the leased premises (this provision is not mandatory if the lessee would be prohibited by law from making such an agreement);

(6) In the event that historic properties, archeological resources, human remains, or other cultural items not previously reported are encountered during the course of any activity associated with the lease, all activity in the immediate vicinity of the properties, resources, remains, or items will cease and the lessee will contact BIA and the tribe that has jurisdiction to determine how to proceed and appropriate disposition;

(7) BIA has the right, at any reasonable time during the term of the lease and upon reasonable notice, to enter upon the leased premises for inspection; and

(8) Unless otherwise indicated, this is a lease of the trust and restricted interests in the property described and is not a lease of any undivided fee interests. All compensation payments by the lessee will be distributed to the trust and restricted landowners and life estate holders on trust and restricted land only. The lessee will be responsible for accounting to the owners of any fee interests that may exist in the property being leased.

(c) We may treat any provision of a lease, sublease, assignment, amendment or mortgage that is in violation of Federal law as a violation of the lease.

§ 162.540 May improvements be made under a WSR lease?

(a) A WSR lease must provide for the installation of a facility and associated infrastructure of a size and magnitude necessary for the generation and delivery of electricity. These facilities and associated infrastructure are considered improvements. A resource development plan must be submitted for approval with the lease pursuant to § 162.563(g).

(b) If any of the following changes are made to the resource development plan, the Indian landowner and BIA must approve the revised plan:

(1) Location of improvements;

(2) Type of improvements; or

(3) Delay of 90 days or more in any phase of development.

§ 162.541 How must a WSR lease address ownership of improvements?

(a) A WSR lease must specify who will own any improvements the lessee installs during the lease term and may specify that any improvements the lessee installs may be conveyed to the Indian landowners during the lease term and under what conditions the improvements may be conveyed. In addition, the lease must indicate whether each specific improvement the lessee installs will, upon the expiration or termination of the lease:

(1) Remain on the leased premises, in a condition satisfactory to the Indian landowners and become the property of the Indian landowner;

(2) Be removed within a time period specified in the lease, at the lessee's expense, with the leased premises to be restored as close as possible to their condition before installation of such improvements; or

(3) Be disposed of by other specified means.

(b) A lease that requires the lessee to remove the improvements must also provide the Indian landowners with an option to take possession of and title to the improvements if the improvements are not removed within the specified time period.

§ 162.542 How will BIA enforce removal requirements in a WSR lease?

We may take appropriate enforcement action in consultation with the tribe, for tribal land or, where feasible, Indian landowners for individually owned Indian land, to ensure removal of the improvements or restoration of the premises at the lessee's expense. We may take such enforcement action after termination or expiration of the lease. We may collect and hold the performance bond until removal and restoration are completed.

§ 162.543 What requirements for due diligence must a WSR lease include?

(a) A WSR lease must include due diligence requirements that require the lessee to:

(1) Commence installation of energy facilities within 2 years after the effective date of the lease or consistent with a timeframe contained in the resource development plan;

(2) Provide the Indian landowners and BIA good cause as to the nature of any delay, the anticipated date of installation of facilities, and evidence of progress toward commencement of installation, if installation does not occur, or is not expected to be completed, within the time period specified in paragraph (a)(1) of this section;

(3) Maintain all on-site electrical generation equipment and facilities and related infrastructure in accordance with the design standards in the resource development plan; and

(4) Repair, place into service, or remove from the site within 30 days any idle, improperly functioning, or abandoned equipment or facilities that have been inoperative for any continuous period of 3 months (unless the equipment or facilities were idle as a result of planned suspension of operations, for example, for grid operations or during bird migration season).

(b) Failure of the lessee to comply with the due diligence requirements of the lease is a violation of the lease and may lead to cancellation of the lease under § 162.589.

§ 162.544 May a WSR lease allow compatible uses?

The lease may provide for the Indian landowner to use, or authorize others to use, the leased premises for other uses compatible with the purpose of the WSR lease and consistent with the terms of the WSR lease. This may include the right to lease the premises for other compatible purposes. Any such use or authorization by the Indian landowner will not reduce or offset the monetary compensation for the WSR lease.

§ 162.545 How must a WSR lease describe the land?

(a) A WSR lease must describe the leased premises by reference to an official or certified survey as required by § 162.563(i) of this part.

(b) If the tract is fractionated, we will describe the undivided trust interest in the leased premises.

Monetary Compensation Requirements

§ 162.546 How much monetary compensation must be paid under a WSR lease?

(a) A WSR lease of tribal land may allow for any payment negotiated by the tribe as long as the tribe provides the tribal authorization required by § 162.547(a). The tribe may request, in writing, that we require fair market rental, in which case we will determine fair market rental in accordance with § 162.548 and will approve the lease only if it requires payment of not less than fair market rental. Unless the tribe makes such a request, BIA will not require a valuation or appraisal or determine fair market rental, but instead will defer to the tribe's determination that the negotiated compensation is in its best interest.

(b) A WSR lease of individually owned Indian land must require payment of not less than fair market rental before any adjustments, based on a fixed amount, a percentage of the projected gross income, megawatt capacity fee, or some other method, unless paragraphs (a)(1) or (a)(2) of this section permit a lesser amount. The lease must establish how the fixed amount, percentage or combination will be calculated and the frequency at which the payments will be made.

(1) We may approve a lease of individually owned Indian land that provides for the payment of nominal compensation, or less than a fair market rental, if:

(i) The Indian landowners execute a written waiver of the right to receive fair market rental; and

(ii) We determine it is in the Indian landowners' best interest, based on factors including, but not limited to:

(A) The lessee is a member of the Indian landowners' immediate family as defined in § 162.003;

(B) The lessee is a co-owner of the leased tract;

(C) A special relationship or circumstances exist that we believe warrant approval of the lease; or

(D) The lease is for public purposes.

(2) We may approve a lease that provides for the payment of less than a fair market rental during the periods before the generation and transmission of electricity begins, if we determine it is in the Indian landowners' best interest. The lease must specify the amount of the compensation and the applicable periods.

(3) Where the owners of the applicable percentage of interests under § 162.011 of this part grant a WSR lease on behalf of all of the Indian landowners of a fractionated tract, the lease must provide that the non-consenting Indian landowners, and those on whose behalf we have consented, receive a fair market rental.

§ 162.547 Will BIA require a valuation to determine fair market rental of a WSR lease?

(a) We will not require valuations or appraisals for negotiated WSR leases of tribal land, or of any undivided tribal interest in a fractionated tract, if the tribe submits a tribal authorization expressly stating that it:

(1) Has negotiated compensation satisfactory to the tribe;

(2) Waives valuation and appraisal; and

(3) Has determined that accepting such negotiated compensation and waiving valuation and appraisal is in its best interest.

(b) The tribe may request that BIA require a valuation or appraisal, in which case BIA must determine fair market rental in accordance with § 162.548.

(c) We will not waive the valuation requirement for WSR leases on individually owned Indian land, but we may accept an economic analysis in lieu of an appraisal if we determine it to be in the best interest of the Indian landowners and:

(1) The Indian landowners submit a written statement to us requesting an economic analysis in lieu of an appraisal and explaining the basis for the request and their willingness to accept nominal or less than fair market rental;

(2) After receiving an estimated timeframe for completion of the analysis from the Office of Indian Energy & Economic Development (IEED), the Indian landowner submits a written request for economic analysis to IEED; and

(3) IEED prepares an economic analysis of the project.

§ 162.548 What type of valuation may be used to determine fair market rental for a WSR lease?

(a) We will use an appraisal to determine the fair market rental before we approve a WSR lease of individually owned Indian land, or at the request of the tribe for tribal land, unless we approve another type of valuation under paragraph (d) of this section.

(b) We will either:

(1) Prepare an appraisal; or

(2) Use an approved appraisal from the Indian landowner or lessee.

(c) We will approve an appraisal for use only if it:

(1) Has been prepared in accordance with USPAP or a valuation method developed by the Secretary pursuant to 25 U.S.C. 2214; and

(2) Complies with Department policies regarding appraisals, including third-party appraisals.

(d) Upon receipt of a tribal authorization, we may use some other type of valuation for a WSR lease on tribal land, if it conforms to USPAP or a valuation method developed by the Secretary pursuant to 25 U.S.C. 2214.

§ 162.549 When are monetary compensation payments due under a WSR lease?

(a) A WSR lease must specify the dates on which all payments are due.

(b) Unless otherwise provided in the lease, payments may not be made or accepted more than one year in advance of the due date.

(c) Payments are due at the time specified in the lease, regardless of whether the lessee receives an advance billing or other notice that a payment is due.

§ 162.550 Must a WSR lease specify to whom monetary compensation payments may be made?

(a) A WSR lease must specify whether the lessee will make payments directly to the Indian landowners (direct pay) or to us on their behalf.

(b) The lessee may make payments directly to the Indian landowners whose trust accounts are unencumbered when there are 10 or fewer beneficial owners and 100 percent of the beneficial owners agree to receive payment directly from the lessee.

(1) If the lease provides that the lessee will directly pay the Indian landowners, the lease must also require that the lessee provide us with certification of payment.

(2) When we consent on behalf of an Indian landowner, the lessee must make payment to us.

(3) The lessee must send direct payments to the parties and addresses specified in the lease, unless the lessee receives notice of a change of ownership or address.

(4) Unless otherwise provided in the lease, payments may not be made payable directly to anyone other than the Indian landowners.

(5) Direct payments must continue through the duration of the lease, except if:

(i) 100 percent of the Indian landowners agree to suspend direct pay and provide us with documentation of their agreement, then the lessee must make all Indian landowners' payments to us; or

(ii) If any individual Indian landowner dies, is declared non compos mentis, becomes whereabouts unknown, or owes a debt resulting in a trust account encumbrance, then the lessee must make that individual Indian landowner's payment to us.

§ 162.551 What form of monetary compensation payment may be accepted under a WSR lease?

(a) When payments are made directly to Indian landowners, the form of payment must be acceptable to the Indian landowners.

(b) When payments are made to us, we will accept:

(1) Money orders;

(2) Certified checks;

(3) Cashier's checks; or

(4) Electronic funds transfer payments.

(c) We will not accept cash, foreign currency, or third-party checks except for third-party checks from financial institutions.

(d) The preferred method of payment is electronic funds transfer payments.

§ 162.552 May the WSR lease provide for non-monetary or varying types of compensation?

(a) With our approval, the lease may provide for:

(1) Alternative forms of compensation, including but not limited to in-kind consideration and payments based on percentage of income; or

(2) Varying types of consideration at specific stages during the life of the lease, including but not limited to fixed annual payments during installation, payments based on income during an operational period, and bonuses.

(b) For individually owned land, we will approve alternative forms of compensation and varying types of consideration if we determine that it is in the best interest of the Indian landowners. For tribal land, we will defer to the tribe's determination that the alternative forms of rental and varying types of consideration are in its best interest, if the tribe submits a signed certification stating that it has determined the alternative forms of rental and varying types of consideration to be in its best interest.

§ 162.553 Will BIA notify a lessee when a payment is due under a WSR lease?

Upon request of the Indian landowner, we may issue invoices to a lessee in advance of the dates on which payments are due under a WSR lease, but the lessee's obligation to make such payments in a timely manner will not be excused if such invoices are not delivered or received.

§ 162.554 Must a WSR lease provide for compensation reviews or adjustments?

(a) A review of the adequacy of compensation must occur at least every fifth year, in the manner specified in the lease, unless the conditions in paragraph (b) of this section are met. The lease must specify:

(1) When adjustments take effect;

(2) Who is authorized to make adjustments;

(3) What the adjustments are based on; and

(4) How to resolve disputes arising from the adjustments.

(b) A review of the adequacy of compensation is not required if:

(1) The lease provides for automatic adjustments; or

(2) We determine it is in the best interest of the Indian landowners not to require a review or automatic adjustment based on circumstances including, but not limited to, the following:

(i) The lease provides for payment of less than fair market rental;

(ii) The lease is for public purposes; or

(iii) The lease provides for most or all of the compensation to be paid during the first five years of the lease term or prior to the date the review would be conducted.

(c) When a review results in the need for adjustment of compensation, we must approve the adjustment and Indian landowners must consent to the adjustment in accordance with § 162.011, unless otherwise provided in the lease.

§ 162.555 What other types of payments are required under a WSR lease?

(a) The lessee may be required to pay additional fees, taxes, and/or assessments associated with the use of the land, as determined by entities having jurisdiction, except as provided in § 162.515(c). The lessee must pay these amounts to the appropriate office.

(b) If the leased premises are within an Indian irrigation project or drainage district, except as otherwise provided in part 171 of this chapter, the lessee must pay all operation and maintenance charges that accrue during the lease term. The lessee must pay these amounts to the appropriate office in charge of the irrigation project or drainage district. Failure to make such payments will be treated as a violation of the lease.

(c) Where the property is subject to at least one other lease for another compatible use, such as grazing, the lessees may agree among themselves as to how to allocate payment of the operation and maintenance charges.

Bonding and Insurance

§ 162.559 Must a lessee provide a performance bond for a WSR lease?

(a) Except as provided in paragraph (f) of this section, the lessee must provide a performance bond in an amount sufficient to secure the contractual obligations including:

(1) No less than the highest annual rental specified in the lease, if the compensation is paid annually, or other amount established by BIA in consultation with the tribe, for tribal land or, where feasible, with Indian landowners for individually owned Indian land, if the compensation is to be paid on a non-annual schedule;

(2) The performance and payment for the installation of any required improvements;

(3) The operation and maintenance charges for any land located within an irrigation project; and

(4) The restoration and reclamation of the leased premises, to their condition at the commencement of the lease term or some other specified condition.

(b) The performance bond must be deposited with us and made payable only to us, and may not be modified without our approval.

(c) The lease must provide that we may adjust security or performance bond requirements at any time to reflect changing conditions.

(d) We may require that the surety provide any supporting documents needed to show that the performance bond will be enforceable, and that the surety will be able to perform the guaranteed obligations.

(e) The surety must provide notice to us at least 60 days before canceling a performance bond so that we may notify the lessee of its obligation to provide a substitute performance bond and require collection of the bond prior to the cancellation date. Failure to provide a substitute performance bond will be a violation of the lease.

(f) We may waive the requirement for a performance bond upon the request of the Indian landowner, if a waiver is in the best interest of the Indian landowner, including if the lease is for less than fair market rental or nominal compensation. We may revoke the waiver and require a performance bond at any time if the waiver is no longer in the best interest of the Indian landowner.

§ 162.560 What forms of performance bond may be accepted under a WSR lease?

(a) We will only accept a performance bond in one of the following forms:

(1) Certificates of deposit issued by a federally insured financial institution authorized to do business in the United States;

(2) Irrevocable letters of credit issued by a federally insured financial institution authorized to do business in the United States;

(3) Negotiable Treasury securities; or

(4) Surety bond issued by a company approved by the U.S. Department of the Treasury.

(b) All forms of performance bonds must:

(1) Indicate on their face that BIA approval is required for redemption;

(2) Be accompanied by a statement granting full authority to BIA to make an immediate claim upon or sell them if the lessee violates the terms of the lease;

(3) Be irrevocable during the term of the performance bond; and

(4) Be automatically renewable during the term of the lease.

§ 162.561 What is the bond release process under a WSR lease?

(a) Upon expiration, termination, or cancellation of the lease, the lessee must submit a written request for a performance bond release to BIA.

(b) Upon receipt of the request under paragraph (a) of this section, BIA will confirm with the tribe, for tribal land or, where feasible, with the Indian landowners for individually owned Indian land, that the lessee has complied with all lease obligations, then release the performance bond to the lessee unless we determine that the performance bond must be redeemed to fulfill the contractual obligations.

§ 162.562 Must a lessee provide insurance for a WSR lease?

Except as provided in paragraph (c) of this section, a lessee must provide insurance when necessary to protect the interests of Indian landowners and in the amount sufficient to protect all insurable improvements on the leased premises.

(a) Such insurance may include property, liability and/or casualty insurance, depending on the Indian landowners' interests to be protected.

(b) Both the Indian landowners and the United States must be identified as additional insured parties.

(c) We may waive the requirement for insurance upon the request of the Indian landowner, if a waiver is in the best interest of the Indian landowner, including if the lease is for less than fair market rental or nominal compensation. We may revoke the waiver and require insurance at any time if the waiver is no longer in the best interest of the Indian landowner.

Approval

§ 162.563 What documents must the parties submit to obtain BIA approval of a WSR lease?

A lessee or the Indian landowner must submit the following documents to us to obtain BIA approval of a WSR lease:

(a) A lease executed by the Indian landowner and the lessee that complies with the requirements of this part;

(b) An appraisal or other valuation under § 162.547, if appropriate;

(c) Organizational documents, certificates, filing records, and resolutions or other authorization documents, including evidence of the representative's authority to execute a lease, if the lessee is a corporation, limited liability company, partnership, joint venture, or other legal entity, to show that the lease will be enforceable and that the legal entity is in good standing and authorized to conduct business in the jurisdiction where the land is located;

(d) A performance bond, where required;

(e) Statement from the appropriate tribal authority that the proposed use is in conformance with applicable tribal law;

(f) Environmental and archeological reports, surveys, and site assessments as needed to facilitate compliance applicable Federal and tribal environmental and land use requirements;

(g) A resource development plan that describes the type and location of any improvements the lessee plans to install and a schedule showing the tentative commencement and completion dates for those improvements;

(h) A restoration and reclamation plan (and any subsequent modifications to the plan);

(i) An official or a certified survey of the leased premises that includes the legal description of the land encumbered by the lease and a description of each tract of trust or restricted land in the lease and the acreage of each. We will review the survey under the DOI Standards for Indian Trust Land Boundary Evidence;

(j) Documents that demonstrate the technical capability of the lessee or lessee's agent to construct, operate, maintain, and terminate resource development facilities and the lessee's history in successfully designing, constructing, or obtaining the funding for a resource development project (for example, documents evidencing lessee's actual ownership, development, or management of a successful similarly-sized project within the last 5 years);

(k) Information to assist us in our evaluation of the factors in 25 U.S.C. 415(a); and

(l) Any additional documentation we determine to be reasonably necessary for approval.

§ 162.564 What is the approval process for a WSR lease?

(a) Before we approve a WSR lease, we must determine that the lease is in the best interest of the Indian landowners. In making that determination, we will:

(1) Review the lease and supporting documents;

(2) Identify potential environmental impacts and ensure compliance with all applicable environmental laws, land use laws, and ordinances;

(3) Assure ourselves that adequate consideration has been given to the factors in 25 U.S.C. 415(a);

(4) Require any lease modifications or mitigation measures necessary to satisfy any requirements including any other Federal or tribal land use requirements; and

(5) If the lease is a negotiated lease, defer to the Indian landowners' determination that the lease is in their

best interest, to the maximum extent possible.

(b) When we receive a WSR lease proposal and all of the supporting documents that conform to this part, we will, within 60 days of the date of receipt of the documents at the appropriate BIA office, approve, disapprove, return the submission for revision, or notify the parties in writing that we need additional time to review the lease. Our letter notifying the parties that we need additional time to review the lease must identify our initial concerns and invite the parties to respond within 15 days. We have 30 days from sending the notification to make a determination whether to approve or disapprove the sublease.

(c) If we fail to meet the deadlines in this section, then the parties may take appropriate action under part 2 of this chapter.

(d) We will make any lease approval or disapproval determination and the basis for the determination, along with notification of appeal rights under part 2 of this chapter, in writing and will send the determination and notification to the parties to the lease.

(e) We will provide approved WSR leases on tribal land to the lessee and provide a copy to the tribe. We will provide approved WSR leases on individually owned Indian land to the lessee, and make copies available to the Indian landowners upon written request.

§ 162.565 When will a WSR lease be effective?

(a) A WSR lease will be effective on the date on which we approve the lease, notwithstanding any appeal that may be filed under part 2 of this chapter.

(b) The lease may specify a date on which the obligations between the parties to a WSR lease are triggered. Such date may be before or after the approval date under paragraph (a).

§ 162.566 Must WEEL and WSR lease documents be recorded?

(a) A WEEL and WSR lease, amendment, assignment, leasehold mortgage, and sublease must be recorded in our Land Titles and Records Office with jurisdiction over the leased land.

(1) We will record the lease or other document immediately following our approval.

(2) If our approval is not required, the parties must record the assignment or sublease in the Land Title and Records Office with jurisdiction over the leased land.

(b) The tribe must record the following leases in the Land Titles and Records Office with jurisdiction over the tribal lands, even though BIA approval is not required:

(1) Leases of tribal land that a corporate entity leases to a third party under 25 U.S.C. 477; and

(2) Leases of tribal land under a special act of Congress authorizing leases without our approval.

§ 162.567 What action may BIA take if a lease disapproval decision is appealed?

(a) If a party appeals our decision to disapprove a lease, assignment, amendment, sublease or leasehold mortgage, then the official to whom the appeal is made may require the lessee to post an appeal bond in an amount necessary to protect the Indian landowners against financial losses and damage to trust resources likely to result from the delay caused by an appeal. The requirement to post an appeal bond will apply in addition to all of the other requirements in part 2 of this chapter.

(b) The appellant may not appeal the appeal bond decision. The appellant may, however, request that the official to whom the appeal is made reconsider the bond decision, based on extraordinary circumstances. Any reconsideration decision is final for the Department.

Amendments

§ 162.568 May the parties amend a WSR lease?

(a) The parties may amend a WSR lease by obtaining:

(1) The lessee's signature;

(2) The Indian landowners' consent pursuant to the requirements contained in § 162.569; and

(3) BIA approval of the amendment under § 162.570 and § 162.571.

(b) The parties may not amend a WSR lease if the lease expressly prohibits amendments.

§ 162.569 What are the consent requirements for an amendment to a WSR lease?

(a) The Indian landowners, or their representatives under § 162.012, must consent to an amendment of a WSR lease in the same percentages and manner as a new WSR lease pursuant to § 162.011, unless the requirements in paragraphs (a)(1) or (a)(2) are met.

(1) The approved WSR lease establishes that individual Indian landowners are deemed to have consented if they do not object in writing to the amendment after a specified period of time following landowners' receipt of the amendment. If the lease provides for deemed consent, it must require the parties to submit to us: A copy of the executed amendment or other documentation of the Indian landowners' consent; proof of mailing of the amendment to any Indian landowners who are deemed to have consented; and any other pertinent information to us for review.

(2) The approved WSR lease authorizes one or more representatives to consent to an amendment on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to an amendment.

(b) Unless specifically authorized in the lease, the written power of attorney, or court document, Indian landowners may not be deemed to have consented, and an Indian landowner's designated representative may not negotiate or consent to an amendment that would:

(1) Reduce the payment obligations or terms to the Indian landowners;

(2) Increase or decrease the lease area; or

(3) Terminate or change the term of the lease.

§ 162.570 What is the approval process for an amendment to a WSR lease?

We have 30 days from receipt of the executed assignment, proof of required consents, and required documentation to make a determination whether to approve the amendment or notify the parties in writing that we need additional time to review the amendment.

(a) Our letter notifying the parties that we need additional time to review the amendment must identify our initial concerns and invite the parties to respond within 15 days. We have 30 days from sending the notification to make a determination whether to approve or disapprove the amendment.

(b) If we fail to send either a determination or a notification within 30 days from receipt of required documents and the completion of any environmental reviews or 30 days from sending the notification, the amendment is deemed approved to the extent consistent with Federal law. We will retain our full enforcement authority for amendments that are deemed approved.

(c) Our determination whether to approve the amendment will be in writing and will state the basis for our approval or disapproval.

§ 162.571 How will BIA decide whether to approve an amendment to a WSR lease?

(a) We may only disapprove a WSR lease amendment if:

(1) The required consents have not been obtained from the parties to the lease and any mortgagees or sureties;

(2) The lessee is in violation of the lease; or

(3) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) We may not unreasonably withhold approval of an amendment.

Assignments

§ 162.572 May a lessee assign a WSR lease?

(a) A lessee may assign a WSR lease by meeting the consent requirements contained in § 162.573 and obtaining our approval of the assignment under § 162.574 and § 162.575 or by meeting the conditions in paragraphs (b) or (c) of this section, unless the lease expressly prohibits assignments.

(b) Where provided in the lease, the lessee may assign the lease to the following without meeting consent requirements or obtaining BIA approval of the assignment, as long as the lessee notifies BIA of the assignment within 30 days:

(1) Not more than two distinct legal entities specified in the lease; or

(2) The lessee's wholly owned subsidiaries.

(c) If a sale or foreclosure under an approved mortgage of the leasehold interest occurs and the mortgagee is the purchaser, the mortgagee/purchaser may assign the leasehold interest without meeting the consent requirements or obtaining our approval, as long as the assignee accepts and agrees in writing to be bound by all the terms and conditions of the lease.

§ 162.573 What are the consent requirements for an assignment of a WSR lease?

The Indian landowners, or their representatives under § 162.012, must consent to an assignment in the same percentages and manner as a new WSR lease, unless the requirements in paragraphs (a) or (b) of this section are met.

(a) The lease establishes that individual Indian landowners are deemed to have consented where they do not object in writing to the assignment after a specified period of time following landowners' receipt of the assignment. If the lease provides for deemed consent, it must require the parties to submit to us: a copy of the executed assignment or other documentation of the Indian landowners' consent; proof of mailing of the assignment to any Indian landowners who are deemed to have consented; and any other pertinent information for us to review.

(b) The approved WSR lease authorizes one or more representatives to consent to an assignment on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to an assignment.

§ 162.574 What is the approval process for an assignment of a WSR lease?

(a) We have 30 days from receipt of the executed assignment, proof of required consents, and required documentation to make a determination whether to approve the assignment or notify the parties that we need additional information. Our determination whether to approve the assignment will be in writing and will state the basis for our approval or disapproval.

(b) If we fail to meet any of the deadlines in this section, the lessee or Indian landowners may take appropriate action under part 2 of this chapter.

§ 162.575 How will BIA decide whether to approve an assignment of a WSR lease?

(a) We may only disapprove an assignment of a WSR lease if:

(1) The required consents have not been obtained from the parties to the lease or the lessee's mortgagees or sureties;

(2) The lessee is in violation of the lease;

(3) The assignee does not agree to be bound by the terms of the lease; or

(4) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(4) of this section, we will consider whether:

(1) The value of any part of the leased premises not covered by the assignment would be adversely affected; and

(2) If a performance bond is required, the assignee has bonded its performance and provided supporting documents that demonstrate that the lease will be enforceable against the assignee, and that the assignee will be able to perform its obligations under the lease or assignment.

(c) We may not unreasonably withhold approval of an assignment.

Subleases

§ 162.576 May a lessee sublease a WSR lease?

A lessee may sublease a WSR lease by meeting the consent requirements contained in § 162.577 and obtaining our approval of the sublease under § 162.578 and § 162.579, unless the lease expressly prohibits subleases.

§ 162.577 What are the consent requirements for a sublease of a WSR lease?

The Indian landowners, or their representatives under § 162.012, must consent to a sublease in the same percentages and manner as a new WSR lease under § 162.011, unless the requirements in paragraphs (a) or (b) of this section are met.

(a) The lease establishes that individual Indian landowners are deemed to have consented where they do not object in writing to the sublease after a specified period of time following landowners' receipt of the sublease. If the lease provides for deemed consent, it must require the parties to submit to us: a copy of the executed sublease or other documentation of the Indian landowners' consent; proof of mailing of the sublease to any Indian landowners who are deemed to have consented; and any other pertinent information for us to review.

(b) The approved WSR lease authorizes one or more representatives to consent to a sublease on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to a sublease.

§ 162.578 What is the approval process for a sublease of a WSR lease?

We have 30 days from receipt of the executed sublease, proof of required consents, and required documentation to make a determination whether to approve the sublease or notify the parties to the sublease and Indian landowners in writing that we need additional time to review the sublease. Our determination whether to approve the sublease will be in writing and will state the basis for our approval or disapproval.

(a) Our letter notifying parties that we need additional time to review the sublease must identify our initial concerns and invite the parties to respond within 15 days. We have 30 days from sending the notification to make a determination whether to approve or disapprove the sublease.

(b) If we fail to send either a determination or a notification within 30 days from receipt of required documents or 30 days from sending the notification, the sublease is deemed approved to the extent consistent with Federal law. We will retain our full enforcement authority for subleases that are deemed approved.

§ 162.579 How will BIA decide whether to approve a sublease of a WSR lease?

(a) We will only disapprove a sublease of a WSR lease if:

(1) The required consents have not been obtained from the parties to the lease and the lessee's mortgagees or sureties;

(2) The lessee is in violation of the lease;

(3) The lessee will not remain liable under the lease;

(4) The sublessee does not agree to be bound by the terms of the lease; and

(5) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(5) of this section, we will consider whether:

(1) The value of any part of the leased premises not covered by the sublease would be adversely affected; and

(2) The sublessee has bonded its performance and provided supporting documents that demonstrate that the lease will be enforceable against the sublessee, and that the sublessee will be will be able to perform its obligations under the lease or sublease.

(c) We may not unreasonably withhold approval of a sublease.

Leasehold Mortgages

§ 162.580 May a lessee mortgage a WSR lease?

A lessee may mortgage a WSR lease by meeting the consent requirements contained in § 162.581 and obtaining our approval of the leasehold mortgage under § 162.582 and § 162.583, unless the lease expressly prohibits leasehold mortgages.

§ 162.581 What are the consent requirements for a leasehold mortgage of a WSR lease?

The Indian landowners, or their representatives under § 162.012, must consent to a leasehold mortgage in the same percentages and manner as a new WSR lease under § 162.011, unless the requirements in paragraphs (a), (b), or (c) of this section are met.

(a) The lease contains a general authorization for a leasehold mortgage and states what law would apply in case of foreclosure.

(b) The lease establishes that individual Indian landowners are deemed to have consented where they do not object in writing to the leasehold mortgage after a specified period of time following landowners' receipt of the leasehold mortgage. If the lease provides for deemed consent, it must require the parties to submit to us: a copy of the executed leasehold mortgage or other documentation of the Indian landowners' consent; proof of mailing of the leasehold mortgage to any Indian landowners who are deemed to have consented; and any other pertinent information for us to review.

(c) The approved WSR lease authorizes one or more representatives to consent to a leasehold mortgage on behalf of all Indian landowners. The lease may also designate us as the Indian landowners' representative for the purposes of consenting to a leasehold mortgage.

§ 162.582 What is the approval process for a leasehold mortgage of a WSR lease?

(a) We have 30 days from receipt of the executed leasehold mortgage, proof of required consents, and required documentation to make a determination whether to approve the leasehold mortgage or notify the parties in writing that we need additional time to review the leasehold mortgage. Our determination whether to approve the leasehold mortgage will be in writing and will state the basis for our approval or disapproval.

(b) If we fail to meet the deadline in this section, the lessee may take appropriate action under part 2 of this chapter.

§ 162.583 How will BIA decide whether to approve a leasehold mortgage of a WSR lease?

(a) We may only disapprove a leasehold mortgage under a WSR lease if:

(1) The required consents have not been obtained from the parties to the lease under or the lessee's sureties;

(2) The leasehold mortgage covers more than the lessee's interest in the leased premises collateral or encumbers unrelated collateral; or

(3) We find a compelling reason to withhold our approval in order to protect the best interests of the Indian landowners.

(b) In making the finding required by paragraph (a)(3) of this section, we will consider whether:

(1) The lessee's ability to comply with the lease would be adversely affected by any new loan obligations;

(2) Any lease provisions would be modified by the leasehold mortgage;

(3) The remedies available to us or to the Indian landowners would be limited (beyond any additional notice and cure rights to be afforded to the mortgagee), in the event of a lease violation; and

(4) Any rights of the Indian landowners would be subordinated or adversely affected in the event of a loan default by the lessee.

(c) We may not unreasonably withhold approval of a leasehold mortgage.

Effectiveness, Compliance, and Enforcement

§ 162.584 When will an amendment, assignment, sublease, or leasehold mortgage under a WSR lease be effective?

(a) An amendment, assignment, sublease, or leasehold mortgage under a WSR lease will be effective when approved, notwithstanding any appeal that may be filed under part 2 of this chapter, unless approval is not required under § 162.008(b) or the conditions in paragraph (b) apply. We will provide copies of approved documents to the party requesting approval and, upon request, to the other parties to the agreement.

(b) If the amendment or sublease was deemed approved pursuant to § 162.570(b) or § 162.578(b), the amendment or sublease becomes effective 45 days from the date the parties mailed or delivered the document to us for our review.

(c) An assignment that has does not require landowner consent or BIA approval shall be effective upon execution by the parties.

§ 162.585 What happens if BIA disapproves an amendment, assignment, sublease, or leasehold mortgage of a WSR lease?

If we disapprove an amendment, assignment, sublease, or leasehold mortgage of a WSR lease, we will notify the parties immediately and advise them of their right to appeal the decision under part 2 of this chapter.

§ 162.586 May BIA investigate compliance with a WSR lease?

(a) We may enter the leased premises at any reasonable time, upon reasonable notice, to protect the interests of the Indian landowners and to determine if the lessee is in compliance with the requirements of the lease.

(b) If the Indian landowner notifies us that a specific lease violation has occurred, we will promptly initiate an appropriate investigation.

§ 162.587 May a WSR lease provide for negotiated remedies in the event of a violation?

(a) A WSR lease of tribal land may provide either or both parties with negotiated remedies in the event of a lease violation, including, but not limited to, the power to terminate the lease. If the lease provides the parties with the power to terminate the lease, BIA approval of the termination is not required and the termination is effective without BIA cancellation. The parties must notify us of the termination so that we may record it in the Land Titles and Records Office.

(b) A WSR lease of individually owned Indian land may provide either or both parties with negotiated remedies, so long as the lease also specifies the manner in which those remedies may be exercised by or on behalf of the applicable percentage of Indian landowners under § 162.011 of this part. If the lease provides the parties with the power to terminate the lease, BIA concurrence with the termination is required to ensure that the Indian landowners of the applicable percentage of interests have consented. BIA will record the termination in the Land Titles and Records Office.

(c) The parties must notify any surety or mortgagee of a termination of a WSR lease.

(d) Negotiated remedies may apply in addition to, or instead of, the cancellation remedy available to us, as specified in the lease.

(e) A WSR lease may provide for lease disputes to be resolved in tribal court or any other court of competent jurisdiction, by a tribal governing body in the absence of a tribal court, or through an alternative dispute resolution method. We may not be bound by decisions made in such forums, but we will defer to ongoing proceedings, as appropriate, in deciding whether to exercise any of the remedies available to us.

§ 162.588 What will BIA do about a violation of a WSR lease?

(a) If we determine there has been a violation of the conditions of a WSR lease, other than a violation of payment provisions covered by paragraph (b) of this section, we will promptly send the lessee and its sureties and any mortgagee a notice of violation. The notice of violation must be provided by certified mail, return receipt requested.

(1) We will send a copy of the notice of violation to the tribe for tribal land, or provide constructive notice to Indian landowners for individually owned Indian land.

(2) Within 10 business days of the receipt of a notice of violation, the lessee must:

(i) Cure the violation and notify us in writing that the violation has been cured;

(ii) Dispute our determination that a violation has occurred; or

(iii) Request additional time to cure the violation.

(3) If a violation is determined to have occurred, we will make a reasonable attempt to notify the Indian landowners.

(4) We may order the lessee to stop work.

(b) A lessee's failure to pay compensation in the time and manner required by a residential lease is a violation of the lease, and we will issue a notice of violation in accordance with this paragraph.

(1) We will send the lessees and its sureties a notice of violation by certified mail, return receipt requested:

(i) Promptly following the date on which payment was due, if the lease requires that payments be made to us; or

(ii) Promptly following the date on which we receive actual notice of non-payment from the Indian landowners, if the lease provides for payment directly to the Indian landowners.

(2) We will send a copy of the notice of violation to the tribe for tribal land, or provide constructive notice to the Indian landowners for individually owned Indian land.

(3) The lessee must provide adequate proof of payment as required in the notice of violation.

(c) The lessee and its sureties will continue to be responsible for the obligations contained in the lease until the lease is terminated, cancelled, or expires.

(d) Nothing in this part affects BIA's ability to take emergency action to protect the leased premises under § 162.021.

§ 162.589 What will BIA do if a lessee does not cure a violation of a WSR lease on time?

(a) If the lessee does not cure a violation of a WSR lease within the requisite time period, or provide adequate proof of payment as required in the notice of violation, we will consult with the tribe for tribal land or, where feasible, Indian landowners for individually owned Indian land, and determine whether:

(1) We should cancel the lease;

(2) The Indian landowners wish to invoke any remedies available to them under the lease;

(3) We should invoke other remedies available under the lease or applicable law, including collection on any available performance bond or, for failure to pay compensation, referral of the debt to the Department of the Treasury for collection; or

(4) The lessee should be granted additional time in which to cure the violation.

(b) We may take action to recover unpaid compensation and any associated late payment charges.

(1) We do not have to cancel the lease or give any further notice to the lessee before taking action to recover unpaid compensation.

(2) We may still take action to recover any unpaid compensation if we cancel the lease.

(c) If we decide to cancel the lease, we will send the lessee and its sureties and any mortgagees a cancellation letter by certified mail, return receipt requested, within 5 business days of our decision. We will send a copy of the cancellation letter to the tribe for tribal land, and will provide Indian landowners for individually owned Indian land with actual or constructive notice of the cancellation. The cancellation letter will:

(1) Explain the grounds for cancellation;

(2) If applicable, notify the lessee of the amount of any unpaid compensation or late payment charges due under the lease;

(3) Notify the lessee of their right to appeal under part 2 of this chapter, including the possibility that the official to whom the appeal is made may require the lessee to post an appeal bond;

(4) Order the lessee to vacate the property within 31 days of the date of receipt of the cancellation letter, if an appeal is not filed by that time; and

(5) Require any other action BIA deems necessary to protect the Indian landowners.

(d) We may invoke any other remedies available to us under the lease, including collecting on any available performance bond, and the Indian landowner may pursue any available remedies under tribal law.

§ 162.590 Will late payment charges or special fees apply to delinquent payments due under a WSR lease?

(a) Late payment charges will apply as specified in the lease. The failure to pay such amounts will be treated as a lease violation.

(b) The following special fees may be assessed to cover administrative costs incurred by the United States in the collection of the debt, if compensation is not paid in the time and manner required, in addition to late payment charges that must be paid to the Indian landowners under the lease:

The lessee will pay . . .	For . . .
(a) $50.00	Dishonored checks.
(b) $15.00	Processing of each notice or demand letter.
(c) 18 percent of balance due.	Treasury processing following referral for collection of delinquent debt.

§ 162.591 How will payment rights relating to WSR leases be allocated between the Indian landowners and the lessee?

The WSR lease may allocate rights to payment for insurance proceeds,

trespass damages, compensation awards, settlement funds, and other payments between the Indian landowners and the lessee. If not specified in the insurance policy, order, award, judgment, or other document including the lease, the Indian landowners will be entitled to receive such payments.

§ 162.592 When will a cancellation of a WSR lease be effective?

(a) A cancellation involving a WSR lease will not be effective until 31 days after the lessee receives a cancellation letter from us, or 41 days from the date we mailed the letter, whichever is earlier.

(b) The cancellation decision will be stayed if an appeal is filed unless the cancellation is made immediately effective under part 2 of this chapter. While a cancellation decision is stayed, the lessee must continue to pay compensation and comply with the other terms of the lease.

§ 162.593 What will BIA do if a lessee remains in possession after a WSR lease expires or is cancelled?

If a lessee remains in possession after the expiration or cancellation of a lease, we may treat the unauthorized possession as a trespass under applicable law. Unless the applicable percentage of Indian landowners under § 162.011 have notified us in writing that they are engaged in good faith negotiations with the holdover lessee to obtain a new lease, we may take action to recover possession on behalf of the Indian landowners, and pursue any additional remedies available under applicable law, such as forcible entry and detainer action.

§ 162.594 Will BIA regulations concerning appeal bonds apply to cancellation decisions involving WSR leases?

(a) Except as provided in paragraph (b) of this section, the appeal bond provisions in part 2 of this chapter will apply to appeals from lease cancellation decisions.

(b) The lessee may not appeal the appeal bond decision. The lessee may, however, request that the official to whom the appeal is made reconsider the appeal bond decision, based on extraordinary circumstances. Any reconsideration decision is final for the Department.

§ 162.595 When will BIA issue a decision on an appeal from a WSR leasing decision?

BIA will issue a decision on an appeal from a leasing decision within 60 days of receipt of all pleadings.

§ 162.596 What happens if the lessee abandons the leased premises?

If a lessee abandons the leased premises, we will treat the abandonment as a violation of the lease. The lease may specify a period of non-use after which the lease premises will be considered abandoned.

16. Add a new subpart G to read as follows:

Subpart G—Records

Sec.

Subpart G—Records

§ 162.701 Who owns the records associated with this part?

(a) Records are the property of the United States if they:

(1) Are made or received by a tribe or tribal organization in the conduct of a Federal trust function under 25 U.S.C. 450f *et. seq.,* including the operation of a trust program; and

(2) Evidence the organization, functions, policies, decisions, procedures, operations, or other activities undertaken in the performance of a Federal trust function under this part.

(b) Records not covered by paragraph (a) of this section that are made or received by a tribe or tribal organization in the conduct of business with the Department of the Interior under this part are the property of the tribe.

§ 162.702 How must records associated with this part be preserved?

(a) Any organization, including tribes and tribal organizations, that has records identified in § 162.701(a) of this part, must preserve the records in accordance with approved Departmental records retention procedures under the Federal Records Act, 44 U.S.C. Chapters 29, 31 and 33. These records and related records management practices and safeguards required under the Federal Records Act are subject to inspection by the Secretary and the Archivist of the United States.

(b) A tribe or tribal organization should preserve the records identified in § 162.701(b) of this part, for the period of time authorized by the Archivist of the United States for similar Department of the Interior records in accordance with 44 U.S.C. Chapter 33. If a tribe or tribal organization does not preserve records associated with its conduct of business with the Department of the Interior under this part, it may prevent the tribe or tribal organization from being able to adequately document essential transactions or furnish information necessary to protect its legal and financial rights or those of persons directly affected by its activities.

§ 162.703 How does the Paperwork Reduction Act affect this part?

The collections of information contained in this part, have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 1076–0155. Response is required to obtain a benefit. A Federal agency may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB Control Number.

Dated: September 22, 2011.

Larry Echo Hawk,

Assistant Secretary—Indian Affairs.

[FR Doc. 2011–29991 Filed 11–28–11; 8:45 am]

BILLING CODE 4310–6W–P

FEDERAL REGISTER

Vol. 76 Tuesday,
No. 229 November 29, 2011

Part III

Federal Communications Commission

47 CFR Parts 0, 1, 20, *et al.*
Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 20, 36, 51, 54, 61, 64, and 69

[WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 11–161]

Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) comprehensively reforms and modernizes the universal service and intercarrier compensation systems to ensure that robust, affordable voice and broadband service, both fixed and mobile, are available to Americans throughout the nation. The Commission adopts fiscally responsible, accountable, incentive-based policies to transition these outdated systems to the Connect America Fund, ensuring fairness for consumers and addressing the communications infrastructure challenges of today and tomorrow. The Commission uses measured but firm glide paths to provide industry with certainty and sufficient time to adapt to a changed regulatory landscape, and establish a framework to distribute universal service funding in the most efficient and technologically neutral manner possible, through market-based mechanisms such as competitive bidding.

DATES: Effective December 29, 2011, except for §§ 1.21001(b) through (d); 1.21002(c) and (d); 1.21004(a); 51.907(b)(1), (c)(1), and (d) through (h); 51.909(b)(1), and (c) through (k); 51.911(b) and (c); 51.915(e)(5) and (f)(7); 51.917(e)(6) and (f)(3); 51.919; 54.304; 54.312(b)(3); 54.313(a)(7) through (a)(11); 54.313(b) through (h); 54.314; 54.320(b); 54.1003; 54.1004(a), (c), and (d); 54.1005(a) and (b); 54.1006(a) through (e); 54.1007(a) and (b); 54.1008(d) and (e); 54.1009(a) through (c); 54.1010; 61.3(bbb)(2); and 69.3(e)(12) which contain information collection requirements that are not effective until approved by the Office of Management and Budget. The Federal Communications Commission will publish a document in the **Federal Register** announcing the effective date for those sections.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order (R&O) in WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208; FCC 11–161, released on November 18, 2011. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 12th Street SW., Washington, DC 20554. Or at the following Internet address: *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-11-161A1.pdf.*

I. Executive Summary

A. Universal Service Reform

1. *Principles and Goals.* We begin by adopting support for broadband-capable networks as an express universal service principle under section 254(b) of the Communications Act, and, for the first time, we set specific performance goals for the high-cost component of the USF that we are reforming today, to ensure these reforms are achieving their intended purposes. The goals are: (1) Preserve and advance universal availability of voice service; (2) ensure universal availability of modern networks capable of providing voice and broadband service to homes, businesses, and community anchor institutions; (3) ensure universal availability of modern networks capable of providing advanced mobile voice and broadband service; (4) ensure that rates for broadband services and rates for voice services are reasonably comparable in all regions of the nation; and (5) minimize the universal service contribution burden on consumers and businesses.

2. *Budget.* We establish, also for the first time, a firm and comprehensive budget for the high-cost programs within USF. The annual funding target is set at no more than $4.5 billion over the next six years, the same level as the high-cost program for Fiscal Year 2011, with an automatic review trigger if the budget is threatened to be exceeded. This will provide for more predictable funding for carriers and will protect consumers and businesses that ultimately pay for the fund through fees on their communications bills. We are today taking important steps to control costs and improve accountability in USF, and our estimates of the funding necessary for components of the Connect America Fund (CAF) and legacy high-cost mechanisms represent our predictive judgment as to how best to allocate limited resources at this time. We anticipate that we may revisit and adjust accordingly the appropriate size of each of these programs by the end of the six-year period, based on market developments, efficiencies realized, and further evaluation of the effect of these programs in achieving our goals.

3. *Public Interest Obligations.* While continuing to require that all eligible telecommunications carriers (ETCs) offer voice services, we now require that they also offer broadband services. We update the definition of voice services for universal service purposes, and decline to disrupt any state carrier of last resort obligations that may exist. We also establish specific and robust broadband performance requirements for funding recipients.

4. *Connect America Fund.* We create the Connect America Fund, which will ultimately replace all existing high-cost support mechanisms. The CAF will help make broadband available to homes, businesses, and community anchor institutions in areas that do not, or would not otherwise, have broadband, including mobile voice and broadband networks in areas that do not, or would not otherwise, have mobile service, and broadband in the most remote areas of the nation. The CAF will also help facilitate our ICC reforms. The CAF will rely on incentive-based, market-driven policies, including competitive bidding, to distribute universal service funds as efficiently and effectively as possible.

5. *Price Cap Territories.* More than 83 percent of the approximately 18 million Americans that lack access to residential fixed broadband at or above the Commission's broadband speed benchmark live in areas served by price cap carriers—Bell Operating Companies and other large and mid-sized carriers. In these areas, the CAF will introduce targeted, efficient support for broadband in two phases.

6. *Phase I.* To spur immediate broadband buildout, we will provide additional funding for price cap carriers to extend robust, scalable broadband to hundreds of thousands of unserved Americans beginning in early 2012. To enable this deployment, all existing legacy high-cost support to price cap carriers will be frozen, and an additional $300 million in CAF funding will be made available. Frozen support will be immediately subject to the goal of achieving universal availability of voice and broadband, and subject to obligations to build and operate broadband-capable networks in areas unserved by an unsubsidized

competitor over time. Any carrier electing to receive the additional support will be required to deploy broadband and offer service that satisfies our new public interest obligations to an unserved location for every $775 in incremental support. Specifically, carriers that elect to receive this additional support must provide broadband with actual speeds of at least 4 Mbps downstream and 1 Mbps upstream, with latency suitable for real-time applications and services such as VoIP, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas. In addition, to ensure fairness for consumers across the country who pay into USF, we reduce existing support levels in any areas where a price cap company charges artificially low end-user voice rates.

7. *Phase II.* The next phase of the CAF will use a combination of a forward-looking broadband cost model and competitive bidding to efficiently support deployment of networks providing both voice and broadband service for five years. We expect that the CAF will expand broadband availability to millions more unserved Americans.

8. We direct the Wireline Competition Bureau to undertake a public process to determine the specific design and operation of the cost model to be used for this purpose, with stakeholders encouraged to participate in that process. The model will be used to establish the efficient amount of support required to extend and sustain robust, scalable broadband in high-cost areas. In each state, each incumbent price cap carrier will be asked to undertake a ''state-level commitment'' to provide affordable broadband to all high-cost locations in its service territory in that state, excluding extremely high cost areas as determined by the model. Importantly, the CAF will only provide support in those areas where a federal subsidy is necessary to ensure the build-out and operation of broadband networks. The CAF will not provide support in areas where unsubsidized competitors are providing broadband that meets our definition. Carriers accepting the state-level commitment will be obligated to meet rigorous broadband service requirements—with interim build-out requirements in three years and final requirements in five years—and will receive CAF funding, in an amount calculated by the model, over a five-year period, with significant financial consequences in the event of non- or under-performance. We anticipate that CAF obligations will keep pace as services in urban areas evolve, and we will ensure that CAF-funded services remain reasonably comparable to urban broadband services over time. After the five-year period, the Commission will use competitive bidding to distribute any universal service support needed in those areas.

9. In areas where the incumbent declines the state-level commitment, we will use competitive bidding to distribute support in a way that maximizes the extent of robust, scalable broadband service subject to an overall budget. In the Further Notice of Proposed Rulemaking (FNPRM) that accompanies this R&O, we propose a structure and operational details for the competitive bidding mechanism, in which any broadband provider that has been designated as an ETC for the relevant area may participate. The second phase of the CAF will distribute a total of up to $1.8 billion annually in support for areas with no unsubsidized broadband competitor. We expect that the model and competitive bidding mechanism will be adopted by December 2012, and disbursements will ramp up in 2013 and continue through 2017.

10. *Rate-of-Return Reforms.* Although they serve less than five percent of access lines in the U.S., smaller rate-of-return carriers operate in many of the country's most difficult and expensive areas to serve. Rate-of-return carriers' total support from the high-cost fund is approaching $2 billion annually. We reform our rules for rate-of-return companies in order to support continued broadband investment while increasing accountability and incentives for efficient use of public resources. Rate-of-return carriers receiving legacy universal service support, or CAF support to offset lost ICC revenues, must offer broadband service meeting initial CAF requirements, with actual speeds of at least 4 Mbps downstream and 1 Mbps upstream, upon their customers' reasonable request. Recognizing the economic challenges of extending service in the high-cost areas of the country served by rate-of-return carriers, this flexible approach does not require rate-of-return companies to extend service to customers absent such a request.

11. Alongside these broadband service rules, we adopt reforms to: (1) Establish a framework to limit reimbursements for excessive capital and operating expenses, which will be implemented no later than July 1, 2012, after an additional opportunity for public comment; (2) encourage efficiencies by extending existing corporate operations expense limits to the existing high-cost loop support and interstate common line support mechanisms, effective January 1, 2012; (3) ensure fairness by reducing high-cost loop support for carriers that maintain artificially low end-user voice rates, with a three-step phase-in beginning July 1, 2012; (4) phase out the Safety Net Additive component of high-cost loop support over time; (5) address Local Switching Support as part of comprehensive ICC reform; (6) phase out over three years support in study areas that overlap completely with an unsubsidized facilities-based terrestrial competitor that provides voice and fixed broadband service, beginning July 1, 2012; and (7) cap per-line support at $250 per month, with a gradual phasedown to that cap over a three-year period commencing July 1, 2012. In the Notice, we seek comment on establishing a long-term broadband-focused CAF mechanism for rate-of-return carriers, and relatedly seek comment on reducing the interstate rate-of-return from its current level of 11.25 percent. We expect rate-of-return carriers will receive approximately $2 billion per year in total high-cost universal service support under our budget through 2017.

12. *CAF Mobility Fund.* Concluding that mobile voice and broadband services provide unique consumer benefits, and that promoting the universal availability of such services is a vital component of the Commission's universal service mission, we create the Mobility Fund, the first universal service mechanism dedicated to ensuring availability of mobile broadband networks in areas where a private-sector business case is lacking. Mobile broadband carriers will receive significant legacy support during the transition to the Mobility Fund, and will have opportunities for new Mobility Fund dollars. The providers receiving support through the CAF Phase II competitive bidding process will also be eligible for the Mobility Fund, but carriers will not be allowed to receive redundant support for the same service in the same areas. Mobility Fund recipients will be subject to public interest obligations, including data roaming and collocation requirements.

Phase I. We provide up to $300 million in one-time support to immediately accelerate deployment of networks for mobile voice and broadband services in unserved areas. Mobility Fund Phase I support will be awarded through a nationwide reverse auction, which we expect to occur in third quarter 2012. Eligible areas will include census blocks unserved today by mobile broadband services, and carriers may not receive support for areas they have previously stated they plan to cover. The auction will

maximize coverage of unserved road miles within the budget, and winners will be required to deploy 4G service within three years, or 3G service within two years, accelerating the migration to 4G. We also establish a separate and complementary one-time Tribal Mobility Fund Phase I to award up to $50 million in additional universal service funding to Tribal lands to accelerate mobile voice and broadband availability in these remote and underserved areas.

Phase II. To ensure universal availability of mobile broadband services, the Mobility Fund will provide up to $500 million per year in ongoing support. The Fund will expand and sustain mobile voice and broadband services in communities in which service would be unavailable absent federal support. The Mobility Fund will include ongoing support for Tribal areas of up to $100 million per year as part of the $500 million total budget. In the Notice we propose a structure and operational details for the ongoing Mobility Fund, including the proper distribution methodology, eligible geographic areas and providers, and public interest obligations. We expect to adopt the distribution mechanism for Phase II in 2012 with implementation in 2013.

13. *Identical Support Rule.* In light of the new support mechanisms we adopt for mobile broadband service and our commitment to fiscal responsibility, we eliminate the identical support rule that determines the amount of support for mobile, as well as wireline, competitive ETCs today. We freeze identical support per study area as of year end 2011, and phase down existing support over a five-year period beginning on July 1, 2012. The gradual phase down we adopt, in conjunction with the new funding provided by Mobility Fund Phase I and II, will ensure that an average of over $900 million is provided to mobile carriers for each of the first four years of reform (through 2015). The phase down of competitive ETC support will stop if Mobility Fund Phase II is not operational by June 30, 2014, ensuring approximately $600 million per year in legacy support will continue to flow until the new mechanism is operational.

14. *Remote Areas Fund.* We allocate at least $100 million per year to ensure that Americans living in the most remote areas in the nation, where the cost of deploying traditional terrestrial broadband networks is extremely high, can obtain affordable access through alternative technology platforms, including satellite and unlicensed wireless services. We propose in the FNPRM a structure and operational details for that mechanism, including the form of support, eligible geographic areas and providers, and public interest obligations. We expect to finalize the Remote Areas Fund in 2012 with implementation in 2013.

15. *Reporting and Enforcement.* We establish a national framework for certification and reporting requirements for all universal service recipients to ensure that their public interest obligations are satisfied, that state and federal regulators have the tools needed to conduct meaningful oversight, and that public funds are expended in an efficient and effective manner. We do not disturb the existing role of states in designating ETCs and in monitoring that ETCs within their jurisdiction are using universal service support for its intended purpose. We seek comment on whether and how we should adjust federal obligations on ETCs in areas where legacy funding is phased down. We also adopt rules to reduce or eliminate support if public interest obligations or other requirements are not satisfied, and seek comment on the appropriateness of additional enforcement mechanisms.

16. *Waiver.* As a safeguard to protect consumers, we provide for an explicit waiver mechanism under which a carrier can seek relief from some or all of our reforms if the carrier can demonstrate that the reduction in existing high-cost support would put consumers at risk of losing voice service, with no alternative terrestrial providers available to provide voice telephony.

B. Intercarrier Compensation Reform

17. *Immediate ICC Reforms.* We take immediate action to curtail wasteful arbitrage practices, which cost carriers and ultimately consumers hundreds of millions of dollars annually:

• *Access Stimulation.* We adopt rules to address the practice of access stimulation, in which carriers artificially inflate their traffic volumes to increase ICC payments. Our revised interstate access rules generally require competitive carriers and rate-of-return incumbent local exchange carriers (LECs) to refile their interstate switched access tariffs at lower rates if the following two conditions are met: (1) A LEC has a revenue sharing agreement and (2) the LEC either has (a) a three-to-one ratio of terminating-to-originating traffic in any month or (b) experiences more than a 100 percent increase in traffic volume in any month measured against the same month during the previous year. These new rules are narrowly tailored to address harmful practices while avoiding burdens on entities not engaging in access stimulation.

• *Phantom Traffic.* We adopt rules to address ''phantom traffic,'' *i.e.,* calls for which identifying information is missing or masked in ways that frustrate intercarrier billing. Specifically, we require telecommunications carriers and providers of interconnected VoIP service to include the calling party's telephone number in all call signaling, and we require intermediate carriers to pass this signaling information, unaltered, to the next provider in a call path.

18. *Comprehensive ICC Reform.* We adopt a uniform national bill-and-keep framework as the ultimate end state for all telecommunications traffic exchanged with a LEC. Under bill-and-keep, carriers look first to their subscribers to cover the costs of the network, then to explicit universal service support where necessary. Bill-and-keep has worked well as a model for the wireless industry; is consistent with and promotes deployment of IP networks; will eliminate competitive distortions between wireline and wireless services; and best promotes our overall goals of modernizing our rules and facilitating the transition to IP. Moreover, we reject the notion that only the calling party benefits from a call and therefore should bear the entire cost of originating, transporting, and terminating a call. As a result, we now abandon the calling-party-network-pays model that dominated ICC regimes of the last century. Although we adopt bill-and-keep as a national framework, governing both inter- and intrastate traffic, states will have a key role in determining the scope of each carrier's financial responsibility for purposes of bill-and-keep, and in evaluating interconnection agreements negotiated or arbitrated under the framework in sections 251 and 252 of the Communications Act. We also address concerns expressed by some commenters about potential fears of traffic ''dumping'' and seek comment in the Notice on whether any additional measures are necessary in this regard.

19. *Multi-Year Transition.* We focus initial reforms on reducing terminating switched access rates, which are the principal source of arbitrage problems today. This approach will promote migration to all-IP networks while minimizing the burden on consumers and staying within our universal service budget. For these rates, as well as certain transport rates, we adopt a gradual, measured transition that will facilitate predictability and stability. First, we require carriers to cap most ICC rates as of the effective date of this

R&O. To reduce the disparity between intrastate and interstate terminating end office rates, we next require carriers to bring these rates to parity within two steps, by July 2013. Thereafter, we require carriers to reduce their termination (and for some carriers also transport) rates to bill-and-keep, within six years for price cap carriers and nine for rate-of-return carriers. The framework and transition are default rules and carriers are free to negotiate alternatives that better address their individual needs. Although the R&O begins the process of reforming all ICC charges by capping all interstate rate elements and most intrastate rate elements, the Notice seeks comment on the appropriate transition and recovery for the remaining originating and transport rate elements. States will play a key role in overseeing modifications to rates in intrastate tariffs to ensure carriers are complying with the framework adopted in this R&O and not shifting costs or otherwise seeking to gain excess recovery. The Notice also seeks comment on interconnection issues likely to arise in the process of implementing a bill-and-keep methodology for ICC.

20. *New Recovery Mechanism.* We adopt a transitional recovery mechanism to mitigate the effect of reduced intercarrier revenues on carriers and facilitate continued investment in broadband infrastructure, while providing greater certainty and predictability going forward than the *status quo.* Although carriers will first look to limited increases from their end users for recovery, we reject notions that all recovery should be borne by consumers. Rather, we believe, consistent with past reforms, that carriers should have the opportunity to seek partial recovery from all of their end user customers. We permit incumbent telephone companies to charge a limited monthly Access Recovery Charge (ARC) on wireline telephone service, with a maximum annual increase of $0.50 for consumers and small businesses, and $1.00 per line for multi-line businesses, to partially offset ICC revenue declines. To protect consumers, we adopt a strict ceiling that prevents carriers from assessing any ARC for any consumer whose total monthly rate for local telephone service, inclusive of various rate-related fees, is at or above $30. Although the maximum ARC is $0.50 per month, we expect the actual average increase across all wireline consumers to be no more than $0.10–$0.15 a month, which translates into an expected maximum of $1.20–$1.80 per year that the average consumer will pay. We anticipate that consumers will receive more than three times that amount in benefits in the form of lower calling prices, more value for their wireless or wireline bill, or both, as well as greater broadband availability. Furthermore, the ARC will phase down over time as carriers' eligible revenue decreases, and we prevent carriers from charging any ARC on Lifeline customers or further drawing on the Lifeline program, so that ICC reform will not raise rates at all for these low-income consumers. We also seek comment in the Notice about reassessing existing subscriber line charges (SLCs), which are not otherwise implicated by this R&O, to determine whether those charges are set at appropriate levels.

21. Likewise, although we do not adopt a rate ceiling for multi-line businesses customers, we do adopt a cap on the combination of the ARC and the existing SLC to ensure that multi-line businesses do not bear a disproportionate share of recovery and that their rates remain just and reasonable. Specifically, carriers cannot charge a multi-line business customer an ARC when doing so would result in the ARC plus the existing SLC exceeding $12.20 per line. Moreover, to further protect consumers, we adopt measures to ensure that carriers must apportion lost revenues eligible for ICC recovery between residential and business lines, appropriately weighting the business lines (*i.e.*, according to the higher maximum annual increase in the business ARC) to prevent carriers that elect not to receive ICC CAF from recovering their entire ICC revenue loss from consumers. Carriers may receive CAF support for any otherwise-eligible revenue not recovered by the ARC. In addition, carriers receiving CAF support to offset lost ICC revenues will be required to use the money to advance our goals for universal voice and broadband.

22. In defining how much of their lost revenues carriers will have the opportunity to recover, we reject the notion that ICC reform should be revenue neutral. We limit carriers' total eligible recovery to reflect the existing downward trends on ICC revenues with declining switching costs and minutes of use. For price cap carriers, baseline recovery amounts available to each price cap carrier will decline at 10 percent annually. Price cap carriers whose interstate rates have largely been unchanged for a decade because they participated in the Commission's 2000 CALLS plan will be eligible to receive 90 percent of this baseline every year from ARCs and the CAF. In those study areas that have recently converted from rate-of-return to price cap regulation, carriers will initially be permitted to recover the full baseline amount to permit a more gradual transition, but we will decline to 90 percent recovery for these areas as well after 5 years. All price cap CAF support for ICC recovery will phase out over a three-year period beginning in the sixth year of the reform.

23. For rate-of-return carriers, recovery will be calculated initially based on rate-of-return carriers' fiscal year 2011 interstate switched access revenue requirement, intrastate access revenues that are being reformed as part of this R&O, and net reciprocal compensation revenues. This baseline will decline at five percent annually to reflect combined historical trends of an annual three percent interstate cost and associated revenue decline, and ten percent intrastate revenue decline, while providing for true ups to ensure CAF recovery in the event of faster-than-expected declines in demand. Both recovery mechanisms provide carriers with significantly more revenue certainty than the *status quo*, enabling carriers to reap the benefits of efficiencies and reduced switching costs, while giving providers stable support for investment as they adjust to an IP world.

24. *Treatment of VoIP Traffic.* We make clear the prospective payment obligations for VoIP traffic exchanged in TDM between a LEC and another carrier, and adopt a transitional framework for VoIP intercarrier compensation. We establish that default charges for ''toll'' VoIP–PSTN traffic will be equal to interstate rates applicable to non-VoIP traffic, and default charges for other VoIP–PSTN traffic will be the applicable reciprocal compensation rates. Under this framework, all carriers originating and terminating VoIP calls will be on equal footing in their ability to obtain compensation for this traffic.

25. *CMRS–Local Exchange Carrier (LEC) Compensation.* We clarify certain aspects of CMRS–LEC compensation to reduce disputes and address existing ambiguity. We adopt bill-and-keep as the default methodology for all non-access CMRS–LEC traffic. To provide rate-of-return LECs time to adjust to bill-and-keep, we adopt an interim transport rule for rate-of-return carriers to specify LEC transport obligations under the default bill-and-keep framework for non-access traffic exchanged between these carriers. We also clarify the relationship between the compensation obligations in section 20.11 of the Commission's rules and the reciprocal

compensation framework, thus addressing growing concerns about arbitrage related to rates set without federal guidance. Further, in response to disputes, we make clear that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Finally, we affirm that all traffic routed to or from a CMRS provider that, at the beginning of a call, originates and terminates within the same MTA, is subject to reciprocal compensation, without exception.

26. *IP-to-IP Interconnection.* We recognize the importance of interconnection to competition and the associated consumer benefits. We anticipate that the reforms we adopt will further promote the deployment and use of IP networks, and seek comment in the accompanying Notice regarding the policy framework for IP-to-IP interconnection. We also make clear that even while our Notice is pending, we expect all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic.

27. In addition, we adopt a limited exception to the phase-down of support for competitive eligible telecommunications carriers for Standing Rock Telecommunications, Inc. (Standing Rock), a Tribally-owned competitive ETC that had its ETC designation modified recently for the purpose of providing service throughout the entire Standing Rock Sioux Reservation. We find that granting a two-year exception to the phase-down of support to this Tribally-owned competitive ETC is in the public interest. For a two-year period, Standing Rock will receive per-line support amounts that are the same as the total support per line received in the fourth quarter of this year. We adopt this approach in order to enable Standing Rock to reach a sustainable scale so that consumers on the Reservation can realize the benefits of connectivity that, but for Standing Rock, they might not otherwise have access to.

II. Procedural Matters

A. Paperwork Reduction Act Analysis

28. The Report and Order contains new information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The new requirements will be submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. We note that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.'' We describe impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the Final Regulatory Flexibility Analysis, infra.

B. Congressional Review Act

29. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

30. As required by the Regulatory Flexibility Act of 1980 (RFA), as amended, Initial Regulatory Flexibility Analyses (IRFAs) were incorporated in the *Notice of Proposed Rule Making and Further Notice of Proposed Rulemaking (USF/ICC Transformation NRPM),* 76 FR 11632, March 3, 2011, in the *Notice of Inquiry and Notice of Proposed Rulemaking (USF Reform NOI/NPRM)*, and in the *Notice of Proposed Rulemaking (Mobility Fund NPRM)*, 75 FR 67060, November 1, 2010, for this proceeding. The Commission sought written public comment on the proposals in the *USF/ICC Transformation NRPM*, including comment on the IRFA. The Commission received comments on the *USF/ICC Transformation NPRM* IRFA. The comments received are discussed below. The Commission did not receive comments on the *USF Reform NOI/NPRM* IRFA or the *Mobility Fund NPRM* IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

D. Need for, and Objectives of, the R&O

31. The R&O adopts fiscally responsible, accountable, incentive-based policies to transition outdated universal service and intercarrier compensation (ICC) systems to the Connect America Fund (CAF), ensuring fairness for consumers and addressing the challenges of today and tomorrow, instead of yesterday. We adopt measured but firm glide paths to provide industry with certainty and sufficient time to adapt to a changed landscape, and establish a regulatory framework which will ultimately distribute all universal service funding in the most efficient and technologically neutral manner possible.

32. For decades, the Commission and the states have administered a complex system of explicit and implicit subsidies to support voice connectivity to the highest cost, most rural, and insular communities in the nation. Networks that provide only voice service, however, are no longer adequate for the country's communication needs. Broadband and mobility have become crucial to our nation's economic development, global competitiveness, and civic life. Businesses need broadband and mobile communications to attract customers and employees, job-seekers need them to find jobs and training, and children need them to get a world-class education. Broadband and mobility also help lower the costs and improve the quality of health care, and enable people with disabilities and Americans of all income levels to participate more fully in society. Broadband-enabled jobs are critical to our nation's economic recovery and long-term economic health, particularly in small towns, rural and insular areas, and Tribal lands.

33. Too many Americans today, however, do not have access to modern networks that support mobility and broadband. Millions of Americans live in areas where there is no access to any broadband network. And millions of Americans live, work, or travel in areas without mobile broadband. There are unserved areas in every state of the nation and its territories, and in many of these areas there is little reason to believe that access to broadband service will be provided to these areas in the near future with current policies.

34. Consistent with the challenge of ensuring that all Americans are offered basic voice service and access to networks that support high-speed Internet access where they live, work and travel, extending and accelerating broadband and advanced mobile wireless deployment have been two of the Commission's top priorities over the past few years. The R&O focuses on those remote and expensive-to-serve communities where the immediate prospect for stand-alone private sector action is limited.

35. Our existing voice-centric universal service system is built on decades-old assumptions that fail to reflect today's networks, the evolving nature of communications services, or the current competitive landscape. As a result, the current system is not equipped to address the universal service challenges raised by broadband, mobility, and the transition to Internet Protocol (IP) networks.

36. With respect to voice services, consumers are increasingly obtaining such services over broadband networks as well as over traditional circuit switched telephone networks. In the R&O, the Commission amends its rules to specify that the functionalities of eligible voice telephony services. The amended definition shifts to a technologically neutral approach, allowing companies to provision voice service over any platform, including the PSTN and IP networks.

37. With respect to broadband, the component of the Universal Service Fund (USF) that supports telecommunications service in high-cost areas has grown from $2.6 billion in 2001 to a projected $4.5 billion in 2011, but recipients lack any accountability for advancing broadband-capable infrastructure that delivers voice service. We also lack sufficient mechanisms to ensure all Commission funded broadband investments are prudent and efficient, including the means to target investment to areas that lack a private business case to build broadband. In addition, the ''rural-rural'' divide must also be addressed—some parts of rural America are connected to state-of-the-art broadband, while other parts of rural America have no broadband access, because the existing program fails to direct money to all parts of rural America where it is needed. Similarly, the Fund supports some mobile providers, but only based on cost characteristics and locations of wireline providers. As a result, the universal service program provides more than $1 billion in annual support to wireless carriers, yet there remain many areas of the country where people live, work, and travel that lack mobile voice coverage, and still larger geographic areas that lack mobile broadband coverage.

38. For the first time, the Commission establishes a defined budget for the high-cost component of the universal service fund. Establishing a CAF budget ensures that individual consumers will not pay more in contributions due to the reforms we adopt today. We therefore establish an annual funding target, set at the same level as our current estimate for the size of the high-cost program for FY 2011, of no more than $4.5 billion. The total $4.5 billion budget will include CAF support resulting from intercarrier compensation reform, as well as new CAF funding for broadband and support for legacy programs during a transitional period.

39. In the R&O, the Commission adopts rules that transform the existing high-cost program—the component of USF directed toward high-cost, rural, and insular areas—into a new, more efficient, broadband-focused Connect America Fund (CAF). In particular, we adopt a framework for the Connect America Fund that will provide support in price cap territories based on a combination of competitive bidding and a forward-looking cost model.

40. In order to take immediate steps to accelerate broadband deployment to unserved areas across America, we modify our rules to provide support to price cap carriers under a transitional distribution mechanism, CAF Phase I, while the cost model is being developed and competitive bidding rules finalized. Specifically, effective in 2012, we freeze support to price cap carriers and their rate-of-return affiliates under our existing high-cost support mechanism: high-cost loop support (HCLS) including safety net additive (SNA), forward-looking model support, local switching support (LSS), interstate access support (IAS), and frozen interstate common line support (ICLS). In addition, we will dedicate up to $300 million in incremental support to price cap carriers each year of CAF Phase I, allocated to carriers serving areas with the highest costs; carriers accepting incremental support will be required to meet defined broadband deployment obligations.

41. We adopt an approach that enables competitive bidding for CAF Phase II support in the near-term in some price cap areas, while in other areas holding the incumbent carrier to broadband and other public interest obligations over large geographies in return for five years of CAF support. Specifically, we adopt the following methodology for providing CAF support in price cap areas. First, the Commission will model forward-looking costs to estimate the cost of deploying broadband-capable networks in high-cost areas and identify at a granular level the areas where support will be available. Second, using the cost model, the Commission will offer each price cap LEC annual support for a period of five years in exchange for a commitment to offer voice across its service territory within a state and broadband service to supported locations within that service territory, subject to robust public interest obligations and accountability standards. Third, for all territories for which price cap LECs decline to make that commitment, the Commission will award ongoing support through a competitive bidding mechanism.

42. We reform legacy support mechanisms for rate-of-return carriers to transition towards a more incentive-based form of regulation with better incentives for efficient operations. In particular, we implement a number of reforms to eliminate waste and inefficiency and improve incentives for rational investment and operation by rate-of-return LECs. Consistent with the framework we establish for support in price cap territories that combines a new forward-looking cost model and competitive bidding, we also lay the foundation for subsequent Commission action that will advance rate-of-return companies on a path toward a more incentive-based form of regulation.

43. We adopt the following reforms that will ensure that the overall size of the Fund is kept within budget while we transition a system that supports only telephone service to a system that will enable the deployment of modern high-speed networks capable of delivering 21st century broadband services and applications, including voice: First, we establish benchmarks that, for the first time, will establish parameters for what actual costs carriers may seek recovery under the federal universal service program. Second, we take immediate steps to ensure that carriers in rural areas are not unfairly burdening consumers across the nation by using excess universal service support to subsidize artificially low end-user rates. Third, we eliminate the safety net additive program, which is no longer meeting its intended purpose. Fourth, we eliminate local switching support in July 2012 whereby recovery for switching investment will occur through the ICC recovery mechanism. Fifth, we eliminate support for rate-of-return companies in any study area that is completely overlapped by an unsubsidized facilities-based terrestrial competitor that offers fixed voice as well as broadband services meeting specified performance standards, as there is no need for universal service subsidies in these cases. Sixth, starting January 1, 2012, support in excess of $250 per line per month will no longer be provided to any carrier.

44. We eliminate the identical support rule. Over a decade of experience with the operation of the current rule and having received a multitude of comments noting that the current rule fails to efficiently target support where it is needed, we conclude that this rule has not functioned as intended. Identical support does not provide appropriate levels of support for the efficient deployment of mobile services in areas that do not support a private business case for mobile voice and broadband. Because the explicit support for mobility that we adopt today will be designed to appropriately target funds to such areas, the identical support rule is

no longer necessary or in the public interest.

45. We transition existing competitive ETC support to the CAF, including our reformed system for supporting mobile service over a five-year period beginning July 1, 2012. We find that a transition is desirable in order to avoid shocks to service providers that may result in service disruptions for consumers. During this period, competitive ETCs offering mobile wireless services will have the opportunity to bid in the Mobility Fund Phase I auction in 2012 and participate in the second phase of the Mobility Fund in 2013. Competitive ETCs offering broadband services that meet the performance standards described above will also have the opportunity to participate in competitive bidding for CAF support in areas where price cap companies decline to make a state-level broadband commitment in exchange for model-determined support in 2013. With these new funding opportunities, many carriers, including wireless carriers, could receive similar or even greater amounts of funding after our reforms than before, albeit with that funding more appropriately targeted to the areas that need additional support.

46. For the purpose of this transition, we conclude that each competitive ETC's baseline support amount will be equal to its total 2011 support in a given study area, or an amount equal to $3,000 times the number of reported lines as of year-end 2011, whichever is lower. Using a full calendar year of support to set the baseline will provide a reasonable approximation of the amount that competitive ETCs would currently expect to receive, absent reform, and a natural starting point for the phase-down of support. In addition, we limit the baseline to $3,000 per line in order to reflect similar changes to our rules limiting support for incumbent wireline carriers to $3,000 per line per year.

47. Competitive ETC support per study area will be frozen at the 2011 baseline, and that monthly baseline amount will be provided from January 1, 2012 to June 30, 2012. Each competitive ETC will then receive 80 percent of its monthly baseline amount from July 1, 2012 to June 30, 2013, 60 percent of its baseline amount from July 1, 2013, to June 30, 2014, 40 percent from July 1, 2014, to June 30, 2015, 20 percent from July 1, 2015, to June 30, 2016, and no support beginning July 1, 2016. The purpose of this phase down is to avoid unnecessary consumer disruption as we transition to new programs that will be better designed to achieve universal service goals, especially with respect to promoting investment in and deployment of mobile service to areas not yet served. We do not wish to encourage further investment based on the inefficient subsidy levels generated by the identical support rule. We conclude that phasing down and transitioning existing competitive support will not create significant or widespread risks that consumers in areas that currently have service, including mobile service, will be left without any viable mobile service provider serving their area. We do, however, delay by two years the phasedown for certain carriers serving remote parts of Alaska and a Tribally-owned competitive ETC, Standing Rock Telecommunications, that received its ETC designation in 2011.

48. We establish the Mobility Fund based on our conclusion that mobile voice and broadband services provide unique consumer benefits and that promoting the universal availability of advanced mobile services is a vital component of the Commission's universal service mission. The Mobility Fund, which will have two phases, will allow funding for mobility while rationalizing how universal service funding is provided, thereby ensuring that funds are cost-effective and targeted to areas that require public funding to receive the benefits of mobility. The purpose of the Mobility Fund is to accelerate the deployment of advanced mobile networks in areas where a private-sector business case is lacking. Mobility Fund recipients will be subject to public interest obligations, including data roaming and collocation requirements.

49. The first phase of the Mobility Fund will provide $300 million in one-time support to immediately accelerate deployment of networks for mobile broadband services in unserved areas. Mobility Fund Phase I support will be awarded through a nationwide reverse auction. Eligible areas will include census blocks unserved today by advanced mobile wireless services. Carriers will be prohibited from receiving support for areas they have previously stated they plan to cover. The auction will maximize coverage of unserved road miles, with the lowest per-unit bids winning. A 25 percent bidding credit will be available for Tribally-owned or controlled providers that participate in the auction and place bids for the eligible census blocks located within the geographic area defined by the boundaries of the Tribal land associated with the Tribal entity seeking support. The auction will also help the Commission develop expertise in running reverse auctions for universal service support. We expect to distribute this support as quickly as feasible, with the goal of holding an auction in the third quarter of 2012. As part of this first phase, we also establish a separate and complementary one-time Tribal Mobility Fund Phase I to award $50 million in additional universal service funding for advanced mobile services on Tribal lands and Alaska Native regions. We do so in order to accelerate mobile broadband availability in these remote and underserved areas.

50. We also establish a Mobility Fund Phase II, which will provide up to $500 million per year in ongoing support to ensure universal availability of advanced mobile services. The Fund will expand and sustain mobile voice and broadband service in communities in which service would be unavailable absent federal support. The Mobility Fund Phase II will include ongoing support for Tribal lands of up to $100 million per year, as part of the $500 million total budget. We also establish a budget of at least $100 million annually for CAF support in remote areas. This reflects our commitment to ensuring that Americans living in the most remote areas of the nation, where the cost of deploying wireline or cellular terrestrial broadband technologies is extremely high, can obtain affordable broadband through alternative technology platforms such as satellite and unlicensed wireless. By setting aside designated funding for these difficult-to-serve areas, we can ensure that those who live and work in remote locations also have access to affordable broadband service.

51. In the R&O, we also take steps to comprehensively reform the intercarrier compensation system to bring substantial benefits to consumers, including reduced rates for all wireless and long distance customers, more innovative communications offerings, and improved quality of service for wireless consumers and consumers of long distance services. The existing intercarrier compensation system—built on geographic and per-minute charges and implicit subsidies—is fundamentally in tension with and a deterrent to deployment of all-IP networks. And the system is eroding rapidly as demand for traditional telephone service falls, with consumers increasingly opting for wireless, VoIP, texting, email, and other phone alternatives. To address these issues, we take immediate action to combat two of the most prevalent arbitrage activities today, phantom traffic and access stimulation. We also launch long-term intercarrier compensation reform by adopting bill-and-keep as the ultimate uniform, national methodology for all

telecommunications traffic exchanged with a local exchange carrier (LEC). We begin the transition to bill-and-keep with terminating switched access rates, which are the main source of arbitrage today. We also begin the process of reforming originating access and other rate elements by capping all interstate rates and most intrastate rates. We provide for a measured, gradual transition to bill-and-keep for these rates, and adopt a recovery mechanism that provides carriers with certain and predictable revenue streams. We make clear the prospective payment obligations for VoIP traffic and adopt a transitional intercarrier compensation framework for VoIP. And finally, we clarify certain aspects of CMRS–LEC compensation to reduce disputes and eliminate ambiguities in our rules.

52. We first adopt revisions to our interstate switched access charge rules to address access stimulation. Access stimulation occurs when a LEC with high switched access rates enters into an arrangement with a provider of high call volume operations such as chat lines, adult entertainment calls, and ''free'' conference calls. Consistent with the approach proposed in the *USF/ICC Transformation NPRM,* we adopt a definition of access stimulation which has two conditions: (1) A revenue sharing condition, revised slightly from the proposal in the *USF/ICC Transformation NPRM;* and (2) an additional traffic volume condition, which is met where the LEC either: (a) has a three-to-one interstate terminating-to-originating traffic ratio in a calendar month; or (b) has had more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year. If both conditions are satisfied, the LEC generally must file revised tariffs to account for its increased traffic and will be required to reduce its interstate switched access tariffed rates to the rates of the price cap LEC in the state with the lowest rates, which are presumptively consistent with the Act. The new access stimulation rules will facilitate enforcement when a LEC does not refile as required.

53. Next, we amend the Commission's rules to address ''phantom traffic'' by ensuring that terminating service providers receive sufficient information to bill for telecommunications traffic sent to their networks, including interconnected VoIP traffic. ''Phantom traffic'' refers to traffic that terminating networks receive that lacks certain identifying information. Collectively, problems involving unidentifiable or misidentified traffic appear to be widespread and this sort of gamesmanship distorts the intercarrier compensation system. To address the problem, we adopt the core of the proposal contained in the *USF/ICC Transformation NPRM*—we modify our call signaling rules to require originating service providers to provide signaling information that includes calling party number (''CPN'') for all voice traffic, regardless of jurisdiction, and to prohibit interconnecting carriers from stripping or altering that call signaling information. Service providers that originate interstate or intrastate traffic on the PSTN, or that originate inter- or intrastate interconnected VoIP traffic destined for the PSTN, will now be required to transmit the telephone number associated with the calling party to the next provider in the call path. Intermediate providers must pass calling party number or charge number signaling information they receive from other providers unaltered, to subsequent providers in the call path.

54. We adopt bill-and-keep as the methodology for all intercarrier compensation traffic, consistent with the National Broadband Plan's recommendation to phase out per-minute intercarrier compensation rates. Under bill-and-keep arrangements, a carrier generally looks to its end-users—who are the entities making the choice to subscribe to the carrier's network—rather than looking to other carriers and their customers to recover its costs. We have legal authority to adopt a bill-and-keep methodology as the end point for reform pursuant to our rulemaking authority to implement sections 251(b)(5) and 252(d)(2), in addition to authority under other provisions of the Act, including sections 201 and 332.

55. We conclude that a uniform, national framework for the transition of intercarrier compensation to bill-and-keep, with an accompanying federal recovery mechanism, best advances our policy goals of accelerating the migration to all IP networks, facilitating IP-to-IP interconnection, and promoting deployment of new broadband networks by providing certainty and predictability to carriers and investors. We adopt a gradual transition for terminating access, providing price cap carriers six years and rate-of-return carriers nine years to reach the end state. We believe that initially focusing the bill-and-keep transition on terminating access rates will allow a more manageable process and will focus reform where some of the most pressing problems, such as access charge arbitrage, currently arise. The transition we adopt sets a default framework, leaving carriers free to enter into negotiated agreements that allow for different terms.

56. We conclude it is appropriate to clarify certain aspects of the obligations the Commission adopted in the 2005 *T-Mobile Order,* 70 FR 1641, March 30, 2005, especially as parties have asked the Commission to make clear when they have the ability to require other carriers to negotiate to reach an interconnection agreement. We reaffirm the findings in the *T-Mobile Order* that incumbent LECs can compel CMRS providers to negotiate in good faith to reach an interconnection agreement, and make clear we have authority to do so pursuant to sections 332, 201, 251 as well as our ancillary authority under 4(i). We also clarify that this requirement does not impose any section 251(c) obligations on CMRS providers, nor does it extend section 252 of the Act to CMRS providers. We decline, at this time, to extend the obligation to negotiate in good faith and the ability to compel arbitration to other contexts.

57. As part of our comprehensive reforms, we adopt a recovery mechanism to facilitate incumbent LECs' gradual transition away from existing intercarrier revenues. This mechanism allows the LECs to recover ICC revenues reduced due to our reforms, up to a defined baseline, from alternate revenue sources: reasonable, incremental increases in end user rates and, where appropriate, through ICC CAF support. The recovery mechanism is limited in time and carefully balances the benefits of certainty and a gradual transition with the need to contain the size of the federal universal service fund and minimize the overall burden on end users. The recovery mechanism is not 100 percent revenue neutral relative to today's revenues, but it eliminates much of the uncertainty carriers face under the existing ICC system, allowing them to make investment decisions based on a full understanding of their revenues from ICC for the next several years.

58. In setting the framework for recovery, we believe that carriers should first look to reasonable but limited recovery from their own end users, consistent with the principle of bill-and-keep and the model in the wireless industry, but take measures to ensure that rates remain affordable and reasonably comparable. Our recovery mechanism has two basic components. First, we define the revenue incumbent LECs are eligible to recover, which we refer to as ''Eligible Recovery.'' Second, we specify how incumbent LECs may recover Eligible Recovery through end-user charges and CAF support. Although we limit a specific recovery

mechanism to incumbent LECs, competitive LECs are free to recover their reduced revenues through end user charges.

59. Consistent with past ICC reforms, we permit carriers to recover a reasonable, limited portion of their Eligible Recovery from their end users through a monthly fixed charge called an Access Recovery Charge (ARC). We take measures to help ensure that any ARC increase on consumers does not impact affordability of rates and the annual increase is limited to $0.50 per month. To protect consumers, and to recognize states that have already rebalanced rates in prior state intercarrier compensation reforms, we adopt a $30 Residential Rate Ceiling to ensure that consumers paying $30 or more do not see any increases through ARCs as a result of our current reform. We also take measures to ensure that multi-line businesses' total subscriber line charge (SLC) plus ARC line items are just and reasonable, we do not permit LECs to charge a multi-line business ARC where the SLC plus ARC would exceed $12.20 per line. Although we limit a specific recovery mechanism to incumbent LECs, competitive LECs are free to recover their reduced revenues through end user charges.

60. The Commission has recognized that some areas are uneconomic to serve absent implicit or explicit support. As we continue the transition from implicit to explicit support that the Commission began in 1997, recovery from the CAF for incumbent LECs will be available to the extent their Eligible Recovery exceeds their permitted ARCs. For price cap carriers that elect to receive CAF support, such support is transitional and phases out over three years, beginning in 2017. For rate-of-return carriers, ICC-replacement CAF support will phase down with Eligible Recovery over time. All incumbent LECs that elect to receive CAF support as part of this recovery mechanism will have broadband obligations and be held to the same accountability and oversight requirements adopted in section VIII. Competitive LECs, which have greater freedom in setting rates and picking which customers to serve, will not be eligible for CAF support to replace reductions in ICC revenues.

61. We establish a rebuttable presumption that the reforms adopted in this R&O, including the recovery of Eligible Recovery from the ARC and CAF, allow incumbent LECs to earn a reasonable return on their investment. We establish a ''Total Cost and Earnings Review,'' through which a carrier may petition the Commission to rebut this presumption and request additional support. We identify certain factors in addition to switched access costs and revenues that *may* affect our analysis of requests for additional support, including: (1) Other revenues derived from regulated services provided over the local network, such as special access; (2) productivity gains; (3) incumbent LEC ICC expense reductions and other cost savings; and (4) other services provided over the local network.

62. Under the new intercarrier compensation regime, all traffic—including VoIP traffic—ultimately will be subject to a bill-and-keep framework. As part of our transition to that end point, we adopt a prospective intercarrier compensation framework for VoIP traffic. In particular, we address the prospective treatment of VoIP–PSTN traffic by adopting a transitional compensation framework for such traffic proposed by commenters in the record. Under this transitional framework: We bring all VoIP–PSTN traffic within the section 251(b)(5) framework; default intercarrier compensation rates for toll VoIP–PSTN traffic are equal to interstate access rates; default intercarrier compensation rates for other VoIP–PSTN traffic are the otherwise-applicable reciprocal compensation rates; and carriers may tariff these default charges for toll VoIP–PSTN traffic in the absence of an agreement for different intercarrier compensation. We also make clear providers' ability to use existing section 251(c)(2) interconnection arrangements to exchange VoIP–PSTN traffic pursuant to compensation addressed in the providers' interconnection agreement, and address the application of Commission policies regarding call blocking in this context.

63. To adopt this prospective regime we rely on our general authority to specify a transition to bill-and-keep for section 251(b)(5) traffic. As a result, tariffing of charges for toll VoIP–PSTN traffic can occur through both federal and state tariffs. We do recognize concerns regarding providers' ability to distinguish VoIP–PSTN traffic from other traffic, and, consistent with the recommendations of a number of commenters, we permit LECs to address this issue through their tariffs, much as they do with jurisdictional issues today.

64. As part of our comprehensive ICC reform, we also believe it is also appropriate for the Commission to clarify the system of intercarrier compensation applicable to non-access traffic exchanged between LECs and CMRS providers. Accordingly, we clarify that the compensation obligations under section 20.11 are coextensive with the reciprocal compensation requirements under section 251(b)(5). Although we have adopted a glide path to a bill-and-keep methodology for access charges generally and for reciprocal compensation between two wireline carriers, we find that a different approach is warranted for non-access traffic between LECs and CMRS providers for several reasons. We find a greater need for immediate application of a bill-and-keep methodology in this context to address traffic stimulation. In addition, consistent with our overall reform approach, we adopt bill-and-keep as the default compensation for non-access traffic exchanged between LECs and CMRS providers. We adopt an additional measure to further ease the move to bill-and-keep LEC–CMRS traffic for rate-of-return carriers. Specifically, we limit rate-of-return carriers' responsibility for the costs of transport involving non-access traffic exchanged between CMRS providers and rural, rate-of-return regulated LECs. We find that these steps are consistent with our overall reform and will support our goal of modernizing and unifying the intercarrier compensation system.

65. We address certain pending issues and disputes regarding what is now commonly known as the intraMTA rule, which provides that traffic exchanged between a LEC and a CMRS provider that originates and terminates within the same Major Trading Area (MTA) is subject to reciprocal compensation obligations rather than interstate or intrastate access charges. We resolve two issues that have been raised before the Commission regarding the correct application of this rule to specific traffic patterns. First, we clarify that a call is considered to be originated by a CMRS provider for purposes of the intraMTA rule only if the calling party initiating the call has done so through a CMRS provider. Second, we affirm that all traffic routed to or from a CMRS provider that, at the beginning of a call, originates and terminates within the same MTA, is subject to reciprocal compensation, without exception. In addition to these clarifications, we also deny requests that the intraMTA rule be modified to encompass a geographic license area known as the regional economic area grouping (REAG).

66. Finally, recognizing that IP interconnection between providers is critical, we agree with the record that, as the industry transitions to all IP networks, carriers should begin planning for the transition to all-IP networks, and that such a transition will likely be appropriate before the completion of the intercarrier

compensation phase down. Even while our FNPRM is pending, we expect all carriers to negotiate in good faith in response to requests for IP-to-IP interconnection for the exchange of voice traffic. The duty to negotiate in good faith has been a longstanding element of interconnection requirements under the Communications Act and does not depend upon the network technology underlying the interconnection, whether TDM, IP, or otherwise.

E. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

67. No comments were filed in response to the *Mobility Fund NPRM* IRFA. In response to the *USF/ICC Transformation NPRM* IRFA, four parties filed comments that specifically address the IRFA with respect to proposed universal service reform. Valley Telephone Cooperative, Cascade Utilities, Molalla Communications and Pine Telephone System filed identical but separate comments contending that, since the Commission's universal service proposals will cause significant financial difficulties for many small companies operating in rural America, the Commission's IRFA contained in the *NPRM* is inadequate. These commenters state that the Commission needs to do a full analysis of the effect that the proposals will have on small companies serving rural areas. In making the determinations reflected in the R&O, we have considered the impact of our actions on small entities.

68. In comments filed in response to the IRFA, concerns were also raised regarding the adequacy of the IRFA with respect to proposed intercarrier compensation reforms. Bluegrass Telephone Company stated that the IRFA was insufficiently specific regarding the proposed access stimulation rules, and that the Commission should decline to act on the proposed access stimulation rules until the Commission releases a more detailed analysis of the rules. Likewise, Furchtgott-Roth Economic Enterprises also states that the IRFA was insufficiently specific regarding the proposed rule for revenue sharing and access charges. We disagree: We believe that the IRFA was adequate and that the opportunity for parties, including small business enterprises to comment in a publicly accessible docket on the proposed rule revisions and other proposals contained in the *USF/ICC Transformation NPRM* was sufficient. The IRFA described that the *USF/ICC Transformation NPRM* sought comment on amendments to the Commission's rules to address access stimulation as well as a range of outcomes for access charge reform. The IRFA further identified carriers, including small entities as possibly being subject to these reforms, including projected reporting or other compliance-related requirements.

F. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

69. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

70. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.

71. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

72. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the R&O.

73. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the R&O.

74. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

75. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72

carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the R&O.

76. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the R&O.

77. *Prepaid Calling Card Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for prepaid calling card providers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 193 carriers have reported that they are engaged in the provision of prepaid calling cards. Of these, an estimated all 193 have 1,500 or fewer employees and none have more than 1,500 employees. Consequently, the Commission estimates that the majority of prepaid calling card providers are small entities that may be affected by rules adopted pursuant to the R&O.

78. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the R&O.

79. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the R&O.

80. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the R&O.

81. *800 and 800-Like Service Subscribers.* Neither the Commission nor the SBA has developed a small business size standard specifically for 800 and 800-like service (toll free) subscribers. The appropriate size standard under SBA rules is for the category Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. The most reliable source of information regarding the number of these service subscribers appears to be data the Commission collects on the 800, 888, 877, and 866 numbers in use. According to our data, as of September 2009, the number of 800 numbers assigned was 7,860,000; the number of 888 numbers assigned was 5,588,687; the number of 877 numbers assigned was 4,721,866; and the number of 866 numbers assigned was 7,867,736. We do not have data specifying the number of these subscribers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of toll free subscribers that would qualify as small businesses under the SBA size standard. Consequently, we estimate that there are 7,860,000 or fewer small entity 800 subscribers; 5,588,687 or fewer small entity 888 subscribers; 4,721,866 or fewer small entity 877 subscribers; and 7,867,736 or fewer small entity 866 subscribers.

82. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

83. *Broadband Personal Communications Service.* The broadband personal communications service (PCS) spectrum is divided into six frequency blocks designated A through F, and the Commission has held auctions for each block. The Commission defined ''small entity'' for Blocks C and F as an entity that has average gross revenues of $40 million or less in the three previous calendar years. For Block F, an additional classification for ''very small business'' was added and is defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. These standards defining ''small entity'' in the context of broadband PCS auctions have been approved by the SBA. No small businesses, within the SBA-approved

small business size standards bid successfully for licenses in Blocks A and B. There were 90 winning bidders that qualified as small entities in the Block C auctions. A total of 93 small and very small business bidders won approximately 40 percent of the 1,479 licenses for Blocks D, E, and F. In 1999, the Commission re-auctioned 347 C, E, and F Block licenses. There were 48 small business winning bidders. In 2001, the Commission completed the auction of 422 C and F Broadband PCS licenses in Auction 35. Of the 35 winning bidders in this auction, 29 qualified as ''small'' or ''very small'' businesses. Subsequent events, concerning Auction 35, including judicial and agency determinations, resulted in a total of 163 C and F Block licenses being available for grant. In 2005, the Commission completed an auction of 188 C block licenses and 21 F block licenses in Auction 58. There were 24 winning bidders for 217 licenses. Of the 24 winning bidders, 16 claimed small business status and won 156 licenses. In 2007, the Commission completed an auction of 33 licenses in the A, C, and F Blocks in Auction 71. Of the 14 winning bidders, six were designated entities. In 2008, the Commission completed an auction of 20 Broadband PCS licenses in the C, D, E and F block licenses in Auction 78.

84. *Advanced Wireless Services.* In 2008, the Commission conducted the auction of Advanced Wireless Services (''AWS'') licenses. This auction, which as designated as Auction 78, offered 35 licenses in the AWS 1710–1755 MHz and 2110–2155 MHz bands (''AWS–1''). The AWS–1 licenses were licenses for which there were no winning bids in Auction 66. That same year, the Commission completed Auction 78. A bidder with attributed average annual gross revenues that exceeded $15 million and did not exceed $40 million for the preceding three years (''small business'') received a 15 percent discount on its winning bid. A bidder with attributed average annual gross revenues that did not exceed $15 million for the preceding three years (''very small business'') received a 25 percent discount on its winning bid. A bidder that had combined total assets of less than $500 million and combined gross revenues of less than $125 million in each of the last two years qualified for entrepreneur status. Four winning bidders that identified themselves as very small businesses won 17 licenses. Three of the winning bidders that identified themselves as a small business won five licenses. Additionally, one other winning bidder that qualified for entrepreneur status won 2 licenses.

85. *Narrowband Personal Communications Services.* In 1994, the Commission conducted an auction for Narrowband PCS licenses. A second auction was also conducted later in 1994. For purposes of the first two Narrowband PCS auctions, ''small businesses'' were entities with average gross revenues for the prior three calendar years of $40 million or less. Through these auctions, the Commission awarded a total of 41 licenses, 11 of which were obtained by four small businesses. To ensure meaningful participation by small business entities in future auctions, the Commission adopted a two-tiered small business size standard in the *Narrowband PCS Second Report and Order,* 65 FR 35875, June 6, 2000. A ''small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $40 million. A ''very small business'' is an entity that, together with affiliates and controlling interests, has average gross revenues for the three preceding years of not more than $15 million. The SBA has approved these small business size standards. A third auction was conducted in 2001. Here, five bidders won 317 (Metropolitan Trading Areas and nationwide) licenses. Three of these claimed status as a small or very small entity and won 311 licenses.

86. *Paging (Private and Common Carrier).* In the *Paging Third Report and Order,* 64 FR 33762, June 24, 1999, we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. A fourth auction, consisting of 9,603 lower and upper paging band licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses.

87. *220 MHz Radio Service—Phase I Licensees.* The 220 MHz service has both Phase I and Phase II licenses. Phase I licensing was conducted by lotteries in 1992 and 1993. There are approximately 1,515 such non-nationwide licensees and four nationwide licensees currently authorized to operate in the 220 MHz band. The Commission has not developed a small business size standard for small entities specifically applicable to such incumbent 220 MHz Phase I licensees. To estimate the number of such licensees that are small businesses, we apply the small business size standard under the SBA rules applicable to Wireless Telecommunications Carriers (except Satellite). Under this category, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. The Commission estimates that nearly all such licensees are small businesses under the SBA's small business size standard that may be affected by rules adopted pursuant to the R&O.

88. *220 MHz Radio Service—Phase II Licensees.* The 220 MHz service has both Phase I and Phase II licenses. The Phase II 220 MHz service is subject to spectrum auctions. In the *220 MHz Third Report and Order,* we adopted a small business size standard for ''small'' and ''very small'' businesses for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. This small business size standard indicates that a ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding three years. A ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that do not

exceed $3 million for the preceding three years. The SBA has approved these small business size standards. Auctions of Phase II licenses commenced on September 15, 1998, and closed on October 22, 1998. In the first auction, 908 licenses were auctioned in three different-sized geographic areas: three nationwide licenses, 30 Regional Economic Area Group (EAG) Licenses, and 875 Economic Area (EA) Licenses. Of the 908 licenses auctioned, 693 were sold. Thirty-nine small businesses won licenses in the first 220 MHz auction. The second auction included 225 licenses: 216 EA licenses and 9 EAG licenses. Fourteen companies claiming small business status won 158 licenses.

89. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (''SMR'') geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than $15 million in each of the three previous calendar years. The Commission awards very small business bidding credits to entities that had revenues of no more than $3 million in each of the three previous calendar years. The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services. The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996. Sixty bidders claiming that they qualified as small businesses under the $15 million size standard won 263 geographic area licenses in the 900 MHz SMR band. The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the $15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band. A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.

90. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the $15 million size standard. In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded. Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

91. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees. We assume, for purposes of this analysis, that all of the remaining existing extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

92. *Broadband Radio Service and Educational Broadband Service.* Broadband Radio Service systems, previously referred to as Multipoint Distribution Service (''MDS'') and Multichannel Multipoint Distribution Service (''MMDS'') systems, and ''wireless cable,'' transmit video programming to subscribers and provide two-way high speed data operations using the microwave frequencies of the Broadband Radio Service (''BRS'') and Educational Broadband Service (''EBS'') (previously referred to as the Instructional Television Fixed Service (''ITFS'')). In connection with the 1996 BRS auction, the Commission established a small business size standard as an entity that had annual average gross revenues of no more than $40 million in the previous three calendar years. The BRS auctions resulted in 67 successful bidders obtaining licensing opportunities for 493 Basic Trading Areas (''BTAs''). Of the 67 auction winners, 61 met the definition of a small business. BRS also includes licensees of stations authorized prior to the auction. At this time, we estimate that of the 61 small business BRS auction winners, 48 remain small business licensees. In addition to the 48 small businesses that hold BTA authorizations, there are approximately 392 incumbent BRS licensees that are considered small entities. After adding the number of small business auction licensees to the number of incumbent licensees not already counted, we find that there are currently approximately 440 BRS licensees that are defined as small businesses under either the SBA or the Commission's rules. The Commission has adopted three levels of bidding credits for BRS: (i) A bidder with attributed average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years (small business) is eligible to receive a 15 percent discount on its winning bid; (ii) a bidder with attributed average annual gross revenues that exceed $3 million and do not exceed $15 million for the preceding three years (very small business) is eligible to receive a 25 percent discount on its winning bid; and (iii) a bidder with attributed average annual gross revenues that do not exceed $3 million for the preceding three years (entrepreneur) is eligible to receive a 35 percent discount on its winning bid. In 2009, the Commission conducted Auction 86, which offered 78 BRS licenses. Auction 86 concluded with ten bidders winning 61 licenses. Of the ten, two bidders claimed small business status and won 4 licenses; one bidder claimed very small business status and won three licenses; and two bidders claimed entrepreneur status and won six licenses.

93. In addition, the SBA's Cable Television Distribution Services small business size standard is applicable to EBS. There are presently 2,032 EBS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions are included in this analysis as small entities. Thus, we estimate that at least 1,932 licensees are small businesses. Since 2007, Cable Television Distribution Services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA defines a small business size standard for this category as any such firms having 1,500 or fewer employees. The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the R&O.

94. *Lower 700 MHz Band Licenses.* The Commission previously adopted

criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits. The Commission defined a ''small business'' as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. Additionally, the Lower 700 MHz Band had a third category of small business status for Metropolitan/Rural Service Area (''MSA/RSA'') licenses, identified as ''entrepreneur'' and defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA approved these small size standards. The Commission conducted an auction in 2002 of 740 Lower 700 MHz Band licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)). Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses. The Commission conducted a second Lower 700 MHz Band auction in 2003 that included 256 licenses: 5 EAG licenses and 476 Cellular Market Area licenses. Seventeen winning bidders claimed small or very small business status and won 60 licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses. In 2005, the Commission completed an auction of 5 licenses in the Lower 700 MHz Band, designated Auction 60. There were three winning bidders for five licenses. All three winning bidders claimed small business status.

95. In 2007, the Commission reexamined its rules governing the 700 MHz band in the *700 MHz Second Report and Order,* 72 FR 48814, August 24, 2007. The *700 MHz Second Report and Order* revised the band plan for the commercial (including Guard Band) and public safety spectrum, adopted services rules, including stringent build-out requirements, an open platform requirement on the C Block, and a requirement on the D Block licensee to construct and operate a nationwide, interoperable wireless broadband network for public safety users. An auction of A, B and E block licenses in the Lower 700 MHz band was held in 2008. Twenty winning bidders claimed small business status (those with attributable average annual gross revenues that exceed $15 million and do not exceed $40 million for the preceding three years). Thirty-three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years). In 2011, the Commission conducted Auction 92, which offered 16 Lower 700 MHz band licenses that had been made available in Auction 73 but either remained unsold or were licenses on which a winning bidder defaulted. Two of the seven winning bidders in Auction 92 claimed very small business status, winning a total of four licenses.

96. *Upper 700 MHz Band Licenses.* In the *700 MHz Second Report and Order,* the Commission revised its rules regarding Upper 700 MHz band licenses. In 2008, the Commission conducted Auction 73 in which C and D block licenses in the Upper 700 MHz band were available. Three winning bidders claimed very small business status (those with attributable average annual gross revenues that do not exceed $15 million for the preceding three years).

97. *700 MHz Guard Band Licensees.* In the *700 MHz Guard Band Order,* 65 FR 17594, April 4, 2000, we adopted a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $40 million for the preceding three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $15 million for the preceding three years. An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000. Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001 and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.

98. *Cellular Radiotelephone Service.* Auction 77 was held to resolve one group of mutually exclusive applications for Cellular Radiotelephone Service licenses for unserved areas in New Mexico. Bidding credits for designated entities were not available in Auction 77. In 2008, the Commission completed the closed auction of one unserved service area in the Cellular Radiotelephone Service, designated as Auction 77. Auction 77 concluded with one provisionally winning bid for the unserved area totaling $25,002.

99. *Private Land Mobile Radio (''PLMR'').* PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by companies of all sizes operating in all U.S. business categories, and are often used in support of the licensee's primary (non-telecommunications) business operations. For the purpose of determining whether a licensee of a PLMR system is a small business as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

100. As of March 2010, there were 424,162 PLMR licensees operating 921,909 transmitters in the PLMR bands below 512 MHz. We note that any entity engaged in a commercial activity is eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

101. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (''BETRS''). In the present context, we will use the SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in

the Rural Radiotelephone Service that may be affected by the rules and policies proposed herein.

102. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service. We will use SBA's small business size standard applicable to Wireless Telecommunications Carriers (except Satellite), *i.e.,* an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard and may be affected by rules adopted pursuant to the R&O.

103. *Aviation and Marine Radio Services.* Small businesses in the aviation and marine radio services use a very high frequency (VHF) marine or aircraft radio and, as appropriate, an emergency position-indicating radio beacon (and/or radar) or an emergency locator transmitter. The Commission has not developed a small business size standard specifically applicable to these small businesses. For purposes of this analysis, the Commission uses the SBA small business size standard for the category Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Most applicants for recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. For purposes of our evaluations in this analysis, we estimate that there are up to approximately 712,000 licensees that are small businesses (or individuals) under the SBA standard. In addition, between December 3, 1998 and December 14, 1998, the Commission held an auction of 42 VHF Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of the auction, the Commission defined a ''small'' business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million. In addition, a ''very small'' business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million dollars. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as ''small'' businesses under the above special small business size standards and may be affected by rules adopted pursuant to the R&O.

104. *Fixed Microwave Services.* Fixed microwave services include common carrier, private operational-fixed, and broadcast auxiliary radio services. At present, there are approximately 22,015 common carrier fixed licensees and 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not created a size standard for a small business specifically with respect to fixed microwave services. For purposes of this analysis, the Commission uses the SBA small business size standard for Wireless Telecommunications Carriers (except Satellite), which is 1,500 or fewer employees. The Commission does not have data specifying the number of these licensees that have more than 1,500 employees, and thus is unable at this time to estimate with greater precision the number of fixed microwave service licensees that would qualify as small business concerns under the SBA's small business size standard. Consequently, the Commission estimates that there are up to 22,015 common carrier fixed licensees and up to 61,670 private operational-fixed licensees and broadcast auxiliary radio licensees in the microwave services that may be small and may be affected by the rules and policies adopted herein. We note, however, that the common carrier microwave fixed licensee category includes some large entities.

105. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico. There are presently approximately 55 licensees in this service. The Commission is unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for the category of Wireless Telecommunications Carriers (except Satellite). Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus, under this category and the associated small business size standard, the majority of firms can be considered small.

106. *39 GHz Service.* The Commission created a special small business size standard for 39 GHz licenses—an entity that has average gross revenues of $40 million or less in the three previous calendar years. An additional size standard for ''very small business'' is: an entity that, together with affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards. The auction of the 2,173 39 GHz licenses began on April 12, 2000 and closed on May 8, 2000. The 18 bidders who claimed small business status won 849 licenses. Consequently, the Commission estimates that 18 or fewer 39 GHz licensees are small entities that may be affected by rules adopted pursuant to the R&O.

107. *Local Multipoint Distribution Service.* Local Multipoint Distribution Service (''LMDS'') is a fixed broadband point-to-multipoint microwave service that provides for two-way video telecommunications. The auction of the 986 LMDS licenses began and closed in 1998. The Commission established a small business size standard for LMDS licenses as an entity that has average gross revenues of less than $40 million in the three previous calendar years. An additional small business size standard for ''very small business'' was added as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. The SBA has approved these small business size standards in the context of LMDS auctions. There were 93 winning bidders that qualified as small entities in the LMDS auctions. A total of 93 small and very small business bidders won approximately 277 A Block licenses and 387 B Block licenses. In 1999, the Commission re-auctioned 161 licenses; there were 32 small and very small businesses winning that won 119 licenses.

108. *218–219 MHz Service.* The first auction of 218–219 MHz spectrum resulted in 170 entities winning licenses for 594 Metropolitan Statistical Area (MSA) licenses. Of the 594 licenses, 557 were won by entities qualifying as a small business. For that auction, the small business size standard was an entity that, together with its affiliates, has no more than a $6 million net worth and, after federal income taxes (excluding any carry over losses), has no more than $2 million in annual profits each year for the previous two years. In the *218–219 MHz Report and Order and Memorandum Opinion and Order,* we

established a small business size standard for a ''small business'' as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and their affiliates, has average annual gross revenues not to exceed $15 million for the preceding three years. A ''very small business'' is defined as an entity that, together with its affiliates and persons or entities that hold interests in such an entity and its affiliates, has average annual gross revenues not to exceed $3 million for the preceding three years. These size standards will be used in future auctions of 218–219 MHz spectrum.

109. *2.3 GHz Wireless Communications Services.* This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined ''small business'' for the wireless communications services (''WCS'') auction as an entity with average gross revenues of $40 million for each of the three preceding years, and a ''very small business'' as an entity with average gross revenues of $15 million for each of the three preceding years. The SBA has approved these definitions. The Commission auctioned geographic area licenses in the WCS service. In the auction, which was conducted in 1997, there were seven bidders that won 31 licenses that qualified as very small business entities, and one bidder that won one license that qualified as a small business entity.

110. *1670–1675 MHz Band.* An auction for one license in the 1670–1675 MHz band was conducted in 2003. The Commission defined a ''small business'' as an entity with attributable average annual gross revenues of not more than $40 million for the preceding three years and thus would be eligible for a 15 percent discount on its winning bid for the 1670–1675 MHz band license. Further, the Commission defined a ''very small business'' as an entity with attributable average annual gross revenues of not more than $15 million for the preceding three years and thus would be eligible to receive a 25 percent discount on its winning bid for the 1670–1675 MHz band license. One license was awarded. The winning bidder was not a small entity.

111. *3650–3700 MHz band.* In March 2005, the Commission released a *Report and Order and Memorandum Opinion and Order* that provides for nationwide, non-exclusive licensing of terrestrial operations, utilizing contention-based technologies, in the 3650 MHz band (*i.e.,* 3650–3700 MHz). As of April 2010, more than 1270 licenses have been granted and more than 7433 sites have been registered. The Commission has not developed a definition of small entities applicable to 3650–3700 MHz band nationwide, non-exclusive licensees. However, we estimate that the majority of these licensees are Internet Access Service Providers (ISPs) and that most of those licensees are small businesses.

112. *24 GHz—Incumbent Licensees.* This analysis may affect incumbent licensees who were relocated to the 24 GHz band from the 18 GHz band, and applicants who wish to provide services in the 24 GHz band. For this service, the Commission uses the SBA small business size standard for the category ''Wireless Telecommunications Carriers (except satellite),'' which is 1,500 or fewer employees. To gauge small business prevalence for these cable services we must, however, use the most current census data. Census data for 2007, which supersede data contained in the 2002 Census, show that there were 1,383 firms that operated that year. Of those 1,383, 1,368 had fewer than 100 employees, and 15 firms had more than 100 employees. Thus under this category and the associated small business size standard, the majority of firms can be considered small. The Commission notes that the Census' use of the classifications ''firms'' does not track the number of ''licenses''. The Commission believes that there are only two licensees in the 24 GHz band that were relocated from the 18 GHz band, Teligent and TRW, Inc. It is our understanding that Teligent and its related companies have less than 1,500 employees, though this may change in the future. TRW is not a small entity. Thus, only one incumbent licensee in the 24 GHz band is a small business entity.

113. *24 GHz—Future Licensees.* With respect to new applicants in the 24 GHz band, the size standard for ''small business'' is an entity that, together with controlling interests and affiliates, has average annual gross revenues for the three preceding years not in excess of $15 million. ''Very small business'' in the 24 GHz band is an entity that, together with controlling interests and affiliates, has average gross revenues not exceeding $3 million for the preceding three years. The SBA has approved these small business size standards. These size standards will apply to a future 24 GHz license auction, if held.

114. *Satellite Telecommunications.* Since 2007, the SBA has recognized satellite firms within this revised category, with a small business size standard of $15 million. The most current Census Bureau data are from the economic census of 2007, and we will use those figures to gauge the prevalence of small businesses in this category. Those size standards are for the two census categories of ''Satellite Telecommunications'' and ''Other Telecommunications.'' Under the ''Satellite Telecommunications'' category, a business is considered small if it had $15 million or less in average annual receipts. Under the ''Other Telecommunications'' category, a business is considered small if it had $25 million or less in average annual receipts.

115. The first category of Satellite Telecommunications ''comprises establishments primarily engaged in providing point-to-point telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' For this category, Census Bureau data for 2007 show that there were a total of 512 firms that operated for the entire year. Of this total, 464 firms had annual receipts of under $10 million, and 18 firms had receipts of $10 million to $24,999,999. Consequently, we estimate that the majority of Satellite Telecommunications firms are small entities that might be affected by rules adopted pursuant to the R&O.

116. The second category of Other Telecommunications ''primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or voice over Internet protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' For this category, Census Bureau data for 2007 show that there were a total of 2,383 firms that operated for the entire year. Of this total, 2,346 firms had annual receipts of under $25 million. Consequently, we estimate that the majority of Other Telecommunications firms are small entities that might be affected by our action.

117. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that

category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the R&O.

118. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the R&O.

119. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

120. *Open Video Services.* The open video system (''OVS'') framework was established in 1996, and is one of four statutorily recognized options for the provision of video programming services by local exchange carriers. The OVS framework provides opportunities for the distribution of video programming other than through cable systems. Because OVS operators provide subscription services, OVS falls within the SBA small business size standard covering cable services, which is ''Wired Telecommunications Carriers.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the R&O. In addition, we note that the Commission has certified some OVS operators, with some now providing service. Broadband service providers (''BSPs'') are currently the only significant holders of OVS certifications or local OVS franchises. The Commission does not have financial or employment information regarding the entities authorized to provide OVS, some of which may not yet be operational. Thus, again, at least some of the OVS operators may qualify as small entities.

121. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the R&O.

122. *Internet Publishing and Broadcasting and Web Search Portals.* Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).'' The SBA has developed a small business size standard for this category, which is: all such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the R&O.

123. *Data Processing, Hosting, and Related Services.* Entities in this category ''primarily * * * provid[e] infrastructure for hosting or data processing services.'' The SBA has developed a small business size standard for this category; that size standard is $25 million or less in average annual receipts. According to Census Bureau data for 2007, there were 8,060 firms in this category that operated for the entire year. Of these, 7,744 had annual receipts of under $24,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the R&O.

124. *All Other Information Services.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

G. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

125. This R&O has two components, modernization of the Commission's universal service system and reform of the Commission's intercarrier compensation mechanism. We summarize below the recordkeeping and other obligations of the R&O. Additional information on each of these requirements can be found in the R&O.

126. In the R&O, the Commission takes several steps to harmonize and update annual reporting requirements relating to universal service recipients. We extend current reporting requirements for voice service to all ETCs, and we adopt uniform broadband reporting requirements for all ETCs. We also adopt rules requiring the reporting of financial and ownership information to assist our discharge of statutory requirements.

127. We extend the current federal annual reporting requirements to all ETCs that receive high-cost support, except recipients of only Mobility Fund Phase I support, as a baseline requirement. We also revise the Commission's annual reporting and certification requirements and create new requirements applicable to all ETCs that receive high-cost support, except recipients of only Mobility Fund Phase I support, to ensure carriers are complying with public interest obligations, including new broadband-related requirements, and that they are using the funds they receive for the intended purposes. These requirements include reports and certifications concerning deployment, performance requirements, service quality, rates, and financial and ownership information. Included in these requirements is a requirement that recipients of funding test their broadband networks for compliance with speed and latency metrics and certify to and report the results to the Universal Service Administrative Company on an annual basis. These results will be subject to audit. We also create new reporting requirements for carriers electing to receive CAF Phase I incremental support. Specifically, carriers will be required to file notices identifying where they will deploy broadband to in connection with their incremental support, and they will be required, as part of their annual filings, to certify that they have met required deployment milestones. Mobility Fund recipients will be required to file annual reports demonstrating the coverage provided with the Mobility Fund support for a period of five years after qualifying for the support. These annual report must include information such as project descriptions and data from network coverage drive tests. We also establish certain reporting requirements for applicants seeking to participate in an auction to bid for Mobility Fund support. These requirements include the disclosure of information such as parties' ownership information and the source of the spectrum they plan to use to meet their Mobility Fund obligations in the particular area(s) for which they plan to bid. Winning bidders who apply for funds awarded through the reverse auction must satisfy additional reporting requirements, including the provision of detailed ownership information. These winning bidders must also provide an irrevocable stand-by Letter of Credit in an amount equal to the amount of Mobility Fund support as it is disbursed. All winning bidders, regardless of criteria such as capitalization level, will be required to meet the Letter of Credit requirement. The Commission concluded that limiting the requirement to bidders below a certain level of capitalization would likely disproportionately burden small business entities, even though small entities are often less able to sustain the additional cost burden of posting financial security while still being able to compete with larger entities.

128. Recognizing that existing five-year build out plans may need to change to account for new broadband obligations adopted in the R&O, we require all ETCs to file a new five-year build-out plan in a manner consistent with our rules. ETCs will also be required to include in their annual reports information regarding their progress on this five-year broadband build-out plan beginning April 1, 2014. We require all rate-of-return ETCs receiving support to include a self-certification letter certifying that they are taking reasonable steps to offer broadband service throughout their service area and that requests for such service are met within a reasonable amount of time. We also require all ETCs receiving CAF support in price cap territories based on a forward-looking cost model to include a self-certification letter certifying that they are meeting the interim deployment milestones as set forth under our revised public interest obligations and that they are taking reasonable steps to meet increased speed obligations that will exist for all supported locations before the expiration of the five-year term for CAF Phase II funding.

129. The rules adopted to address arbitrage practices will affect certain carriers, potentially including small entities. Carriers that meet the definition of access stimulation will generally be required to file revised tariffs to account for the change in the volume of their traffic. Further, the modifications to address phantom traffic will apply to all service providers, including small entities, that originate interstate or intrastate traffic on the PSTN, or that originate inter- or intrastate interconnected VoIP traffic. These measures will require service providers to transmit the telephone number associated with the calling party to the next provider in the call path and intermediate providers to pass calling party number or charge number signaling information they receive from other providers unaltered, to subsequent providers in the call path. Service providers, including small entities, may need to modify some administrative processes relating to their signaling and billing systems as a result of these rule changes.

130. As part of our comprehensive reform of the intercarrier compensation system, we establish a uniform, national transition for default intercarrier compensation rate levels. We set forth two separate transition paths—one for price cap carriers and competitive LECs that benchmark to price cap rates and one for rate-of-return carriers and competitive LECs that benchmark to rate-of-return rates. For the transition of default rates, carriers, including small entities, may be required to adjust their record-keeping, administrative and billing systems, and interstate and

intrastate tariff filings in order to effectuate necessary changes to rate levels. At the same time, carriers will remain free to enter into alternative intercarrier compensation agreements.

131. We also adopt a transitional recovery mechanism in order to facilitate incumbent LECs' gradual transition away from existing revenues. The mechanism will allow LECs to partially recover ICC revenues reduced as part of our intercarrier compensation reforms from sources such as reasonable increases to end user charges and, where appropriate, universal service support. As part of our recovery mechanism and to evaluate compliance with the R&O and rules, incumbent local exchange carriers electing to participate in the recovery mechanism, including small entities, will be required to file data annually regarding rates, revenues, expenses and demand with the Commission, states, and Universal Service Administrative Company (USAC), as applicable. These data are needed to monitor compliance as well as the impact of the reforms we adopt today and to enable the Commission to resolve the issues teed up in the FNPRM regarding the appropriate transition to bill-and-keep. To minimize any burden, filings will be aggregated at the holding company level when possible, limited to the preceding fiscal year, and will include data carriers must monitor to comply with our recovery mechanism rules. For carriers eligible and electing to receive ICC CAF support, we will ensure that the data filed with USAC is consistent with our request, so that carriers can use the same format for both filings. All such information may be filed under protective order and will be treated as confidential.

132. We adopt a prospective intercarrier compensation framework for VoIP traffic. Pursuant to this framework, we allow carriers to tariff default intercarrier compensation charges for toll VoIP–PSTN traffic in the absence of an agreement for different intercarrier compensation. VoIP and other service providers, including small entities, may need to modify or adopt administrative, record-keeping or other processes to implement the new intercarrier compensation framework applicable to VoIP traffic. Service providers may also need to revise their interstate and intrastate tariffs to account for these changes. For interstate toll VoIP–PSTN traffic, the relevant language will be included in a tariff filed with the Commission, and for intrastate toll VoIP–PSTN traffic, the rates may be included in a state tariff.

133. Finally, we clarify that the compensation obligations under section 20.11 of our rules, 47 CFR § 20.11 are coextensive with the reciprocal compensation requirements under 251(b)(5) and we adopt bill-and-keep as the default compensation for non-access traffic exchanged between LECs and CMRS providers. To further ease the move to bill-and-keep LEC–CMRS traffic for rate-of-return carriers, we limit rate-of-return carriers' responsibility for the costs of transport involving non-access traffic exchanged between CMRS providers and rural, rate-of-return regulated LECs. In addition, as described above, we make clarifications surrounding the intraMTA rule. As a result of these actions, service providers, including small entities, may need to modify some of their processes surrounding the billing and collection of intercarrier compensation.

H. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

134. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its approach, which may include the following four alternatives, among others: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

1. Universal Service

135. The Commission is aware that some of the universal service proposals under consideration may impact small entities. The Commission held meetings with small carriers that operate in the most rural areas of the nation and considered the economic impact on small entities, as identified in comments filed in response to the *USF/ICC Transformation NPRM* and the *Mobility Fund NPRM,* in reaching its final conclusions and taking action in this proceeding. In addition, the Commission held a workshop in Nebraska in order to hear directly from small companies serving rural America. The Commission also held various meetings in Alaska and other rural areas, including those in South Dakota.

136. The Commission recognizes that, in the absence of any federal mandate to provide broadband, rate-of-return carriers have been deploying broadband to millions of rural Americans, often with support from a combination of loans from lenders and ongoing universal service support. Rather than establishing a mandatory requirement to deploy broadband-capable facilities to all locations within their service territory, we continue to offer a more flexible approach for these smaller carriers. They will be required to provide their customers with at least the same initial minimum level of broadband service as those carriers who receive model-based support, but given their size, we determine that they should be provided more flexibility in how they make incremental progress in edging out their broadband-capable networks in response to consumer demand; we do not adopt nor impose intermediate build-out milestones. The broadband deployment obligation we adopt is similar to the voice deployment obligations many of these carriers are subject to today.

137. The Commission also considered the economical impact on smaller rate-of-return carriers. Although they serve a smaller portion of access lines in the U.S, smaller rate-of-return carriers operate in many of the most difficult and expensive areas to serve. Recognizing the economic challenges of extending service in the high-cost areas of the country served by rate-of-return carriers, especially smaller carriers, our flexible approach does not require rate-of-return carriers to extend service to customers absent a reasonable request by customers. In addition, we also do not specifically shift these smaller rate-of-return carriers from current support mechanisms or shift them to a model or reverse auction mechanism because we realize that these smaller rate-of-return carriers are indeed unique.

138. Many small carriers operating in more remote rural areas have argued that universal service support provides a significant share of their revenues, and thus sudden changes in the current support mechanisms could have a significant impact on their operations. The reforms we adopt today are interim steps that are necessary to allow these rate-of-return carriers to continue receiving support based on existing mechanisms for the time being, but also begins the process of transitioning carriers to a more incentive-based form of regulation.

139. The Commission further recognizes that the existing regulatory structure and competitive trends places many small carriers under financial strain and inhibits the ability of these providers to raise capital. We take a number of important steps to enhance the sustainability of the universal

service mechanism in the R&O and are careful to implement these changes in a gradual manner so that our efforts do not jeopardize investments made consistent with existing rules. Our goal is to ensure the continued availability and affordability of offerings in the rural and remote communities served by many of these smaller carriers. We provide rate-of-return carriers the predictability of remaining under the legacy universal service system in the near-term, while giving notice that we intend to transition to more incentive-based regulation in the near future. We believe that this approach will provide a more stable base going forward for these carriers and the communities they serve. Today's package of universal service reforms is targeted at eliminating inefficiencies and closing gaps in our system, not at making indiscriminate industry-wide reductions.

140. The Commission also considered the significant economic impact of the CAF Phase I incremental support mechanism on small entities. Most price cap carriers that may receive support under the mechanism are not small. To the extent small carriers elect to receive incremental support, there are additional obligations on such carriers. However, the Commission believes that the burdens associated with meeting these obligations are outweighed by the support provided to meet those obligations, as well as the accompanying public benefits. Carriers may also decline to receive incremental support, and the obligations associated with such support, by filing a notice to that effect.

141. The Commission considered the significant economic impact of eliminating the identical support rule on small entities. Small entities here impacted include small competitive ETCs that receive high-cost universal service support pursuant to the identical support rule. Although retaining the identical support rule may have minimized the significant economic impact for some small competitive ETCs, the Commission concluded that the rule did not efficiently or effectively promote the Commission's universal service goals, including the deployment of mobile services. The Commission did, however, minimize the significant economic impact on small entities by phasing down support over a period of five years, by which time support will be available for many small entities pursuant to Mobility Fund Phase II, Tribal Mobility Fund Phase II, and CAF Phase II. We note that Tribal Mobility Fund Phase II will provide a dedicated form of support for areas that historically have been served by small entities.

142. Further, the Commission took steps to minimize significant economic impacts by automatically pausing the phase-down of support received pursuant to the identical support rule if the Mobility Fund Phase II or, for some small entities, Tribal Mobility Fund Phase II is not operational by June 30, 2014. In addition, the Commission delayed the phase-down for certain carriers serving remote parts of Alaska and a Tribally-owned competitive ETC, Standing Rock Telecommunications, that received its ETC designation in 2011. In the Commission's consideration, these small entities are potentially subject to significant economic impact as a result of an immediate commencement of the phase-down and the delayed phase-down will minimize the impact.

143. The R&O harmonizes and updates the Commission's Universal Service reporting requirements, extending current requirements for voice service to all ETCs. This extension of the reporting requirements will benefit the public interest. The R&O seeks to minimize reporting burdens where possible by requiring certifications rather than data collections and by permitting the use of reports already filed with other government agencies, rather than requiring the production of new ones. The R&O extends the record retention requirement from a period of five to ten years for purposes of litigation under the False Claims Act. The Commission believes that any burdens that may be associated with these requirements is outweighed by the accompanying public benefits.

2. Intercarrier Compensation

144. As a general matter, our actions in the R&O should benefit all service providers, including small entities, by facilitating the exchange of traffic and providing greater regulatory certainty and reduced litigation costs. In the *USF/ICC Transformation NPRM,* we encouraged small entities to bring to the Commission's attention any specific concerns that they had, including on any issues or measures that may apply to small entities in a unique fashion. As described below, in many cases, including for transition paths, recovery, and for certain reporting requirements, we sought to tailor the impact of our reforms to the needs of small entities. In other cases, however, we did not identify any feasible alternatives that would have lessened the economic impact on small entities while achieving the vital reform of the intercarrier compensation system.

145. We considered a range of alternative proposals in regard to our rules designed to address access stimulation. As detailed in the R&O, in response to the record, we found it appropriate to include a traffic measurement condition in the definition of access stimulation. Unlike some proposals in the record, however, as part of this measurement condition, we do not require all LECs, including small entities, to file traffic reports. Instead, we allow carriers paying switched access charges to observe and file complaints based on their own traffic patterns. We concluded that this approach is less burdensome to all LECs, including small entities, than a system that would require all LECs to file traffic reports, as some proposed in the record. Similarly, we also rejected the use of alternative definitional triggers for access stimulation, such as per line MOU limits, in part, to avoid the creation of new self-reporting requirements that could prove burdensome to carriers, including small entities. Finally, our access stimulation rules respond to a concern raised by the Louisiana Small Carrier Committee. Specifically, if a carrier terminates its access revenue sharing agreement before the date on which it would be required to file a revised tariff, then that carrier will not be required to file a revised tariff. This will serve to eliminate any potential to burden such carriers when there is no reason to do so.

146. In the R&O, we set forth default transition paths for terminating end office switching and certain transport rate elements as part of the transition to a bill-and-keep framework. In adopting these default paths, we take into account the unique concerns facing small entities, including many rate-of-return LECs as well as entities that operate in rate-of-return service areas. Accordingly, we set forth a six-year transition for price cap carriers and competitive LECs that benchmark to price cap rates. We adopt a longer nine-year transition for rate-of-return carriers and competitive LECs that benchmark to rate-of-return carrier rates. We found that additional time for rate-of-return carriers and those that benchmark to their rates recognizes the often higher rates of and circumstances unique to these carriers. The longer transition also provides them with a predictable glide path and appropriately balances any adverse impact that could arise from moving carriers too quickly from the existing intercarrier compensation system.

147. The R&O establishes a transitional recovery mechanism to help transition incumbent LECs away from existing revenues, but tailored by type of carrier. To this end, we set forth different methodologies for the calculation of Eligible Recovery for price cap carriers and rate-of-return carriers. As we describe in the R&O, for price cap carriers, our recovery mechanism will allow them to determine at the outset exactly how much their Eligible Recovery will be each year. For rate-of-return carriers, we adopt a recovery mechanism that provides more certainty and predictability than exists today and rewards carriers for efficiencies achieved in switching costs. Rate-of-return carriers will be able to determine their total intercarrier compensation and recovery revenues for all transitioned elements, for each year of the transition. We find that providing this greater degree of certainty for rate-of-return carriers, which are generally smaller and less able to respond to changes in market conditions than price cap carriers, is necessary to provide a reasonable transition from the existing intercarrier compensation system. And, we further tailor the obligations for broadband deployment applicable to rate-of-return and price cap carriers as well as the phase out period applicable to each for the receipt of CAF support. Whereas the phase out of CAF support for price cap carriers will be three years beginning in 2017, ICC CAF support for smaller rate-of-return carriers will phase down as Eligible Revenue decreases over time, but not be subject to other reductions. In addition, as we note above, we establish a presumption that our reforms allow incumbent LECs to earn a reasonable return on investment, but at the same time establish a ''Total Costs and Earnings Review'' through which a carrier may petition the Commission to rebut this presumption. This will ensure that individual carriers, including small entities, are able to seek additional recovery to prevent a taking, where necessary. For competitive LECs, which are not subject to the Commission's end user rate regulations and have greater freedom to set rates and determine which customer to serve, CAF support will not be available for recovery. Competitive LECs may recover lost intercarrier compensation revenues through their end user charges.

148. Above all, our tailored approach to transitional recovery is designed to balance the different circumstances facing the different carrier types and provide all carriers with necessary predictability, certainty and stability to transition from the current intercarrier compensation system. With regard to small carriers in particular, our transitional recovery mechanism includes an assortment of measures to moderate the impact of our reforms on small carriers and provide such carriers with certainty and predictability with regard to their recovery.

149. With respect to the prospective VoIP traffic, we believe that the VoIP–PSTN intercarrier compensation framework that we adopt best balances the policy considerations of providing certainty regarding prospective intercarrier compensation obligations for VoIP–PSTN traffic, while acknowledging the flaws with the current intercarrier compensation regimes. With regard to the scope of our reform, as intercarrier disputes have encompassed all forms of what we define as VoIP–PSTN traffic, including ''one-way'' VoIP services, we believe addressing this traffic comprehensively will help guard against new forms of arbitrage. As part of our reform, we adopt transitional rules that will specify, prospectively, the default compensation for VoIP–PSTN traffic. We reject approaches, including an immediate adoption of a bill-and-keep methodology for VoIP traffic or to delay reform of VoIP traffic to a future point on the glide path. Instead, the framework that we adopt in the R&O will provide greater certainty to service providers, including small entities, regarding intercarrier compensation revenue and reduce intercarrier compensation disputes. Our transitional VoIP–PSTN intercarrier compensation framework provides the opportunity for some revenues in conjunction with other appropriate recovery opportunities adopted as part of comprehensive intercarrier compensation and universal service reform. We rely on existing mechanisms, including tariffs to implement our approach. Carriers may tariff charges at rates equal to interstate access rates for toll VoIP–PSTN traffic in federal or state tariffs, though remain free to negotiate interconnection agreements specifying alternative compensation for that traffic. This prospective regime facilitates the benefits that can arise from negotiated agreements, without sacrificing the revenue predictability traditionally associated with tariffing regimes. In contrast to proposals to require certifications regarding carriers' reported VoIP–PSTN traffic, we also provide all carriers, including small entities, with tools to use in their tariffs to help distinguish VoIP–PSTN traffic. The transitional regime for VoIP–PSTN intercarrier compensation, which allows LECs to tariff charges, also mitigates the concerns of some commenters regarding disparate leverage that may exist in interconnection negotiations.

150. Finally, with respect to our reforms applicable to intercarrier compensation for wireless traffic, we note that our decision to treat ''reasonable compensation'' requirements under § 20.11, 47 CFR 20.11, as coextensive with the scope of reciprocal compensation requirements under section 251(b)(5) of the Act. We also find it in the public interest to set a default pricing methodology of bill-and-keep for LEC–CMRS intraMTA traffic, which shall reduce growing confusion and litigation for these carriers. This action presents a smaller risk of market disruption than would an immediate shift to bill-and-keep more generally and our recovery mechanism provides incumbent LECs with a stable, predictable recovery for reduced intercarrier compensation revenues and we further limit rate-of-return carriers' responsibility for the costs of transport involving non-access traffic exchange between CMRS providers and rural, rate-of-return LECs.

I. Report to Congress

151. The Commission will send a copy of the R&O, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the R&O, including the FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the R&O and FRFA (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects

47 CFR Part 0

Authority delegations (government agencies).

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Telecommunications.

47 CFR Part 20

Communications common carriers, Communications equipment, Radio.

47 CFR Part 36

Communications common carriers, Reporting and Recordkeeping Requirements, Telephone, Uniform systems of accounts.

47 CFR Part 51

Communications common carriers, Telecommunications.

47 CFR Part 54

Communications common carriers, Reporting and recordkeeping requirements, Telecommunications, Telephone.

47 CFR Parts 61 and 69

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

47 CFR Part 64

Communications common carriers, Individuals with disabilities, Reporting and Recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, 20, 36, 51, 54, 61, 64, and 69 to read as follows:

PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended, 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Amend § 0.91 by adding paragraph (p) to read as follows:

§ 0.91 Functions of the Bureau.

* * * * *

(p) In coordination with the Wireless Telecommunications Bureau, serves as the Commission's principal policy and administrative staff resource with respect to the use of market-based mechanisms, including competitive bidding, to distribute universal service support. Develops, recommends and administers policies, programs, rules and procedures concerning the use of market-based mechanisms, including competitive bidding, to distribute universal service support.

■ 3. Amend § 0.131 by adding paragraph (r) to read as follows:

§ 0.131 Functions of the Bureau.

* * * * *

(r) In coordination with the Wireline Competition Bureau, serves as the Commission's principal policy and administrative staff resource with respect to the use of market-based mechanisms, including competitive bidding, to distribute universal service support. Develops, recommends and administers policies, programs, rules and procedures concerning the use of market-based mechanisms, including competitive bidding, to distribute universal service support.

PART 1—PRACTICE AND PROCEDURE

■ 4. The authority citation for part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(j), 160, 201, 225, 303, and 309.

■ 5. Add new subpart AA to part 1 to read as follows:

Subpart AA—Competitive Bidding for Universal Service Support

Sec.

§ 1.21000 Purpose.

This subpart sets forth procedures for competitive bidding to determine the recipients of universal service support pursuant to part 54 of this chapter and the amount(s) of support that each recipient respectively may receive, subject to post-auction procedures, when the Commission directs that such support shall be determined through competitive bidding.

§ 1.21001 Participation in competitive bidding for support.

(a) *Public Notice of the Application Process.* The dates and procedures for submitting applications to participate in competitive bidding pursuant to this subpart shall be announced by public notice.

(b) *Application Contents.* An applicant to participate in competitive bidding pursuant to this subpart shall provide the following information in an acceptable form:

(1) The identity of the applicant, *i.e.,* the party that seeks support, including any required information regarding parties that have an ownership or other interest in the applicant;

(2) The identities of up to three individuals authorized to make or withdraw a bid on behalf of the applicant;

(3) The identities of all real parties in interest to any agreements relating to the participation of the applicant in the competitive bidding;

(4) Certification that the application discloses all real parties in interest to any agreements involving the applicant's participation in the competitive bidding;

(5) Certification that the applicant and all applicable parties have complied with and will continue to comply with § 1.21002;

(6) Certification that the applicant is in compliance with all statutory and regulatory requirements for receiving the universal service support that the applicant seeks;

(7) Certification that the applicant will make any payment that may be required pursuant to § 1.21004;

(8) Certification that the individual submitting the application is authorized to do so on behalf of the applicant; and

(9) Such additional information as may be required.

(c) *Financial Requirements for Participation.* As a prerequisite to participating in competitive bidding, an applicant may be required to post a bond or place funds on deposit with the Commission in an amount based on the default payment that may be required pursuant to § 1.21004. The details of and deadline for posting such a bond or making such a deposit will be announced by public notice. No interest will be paid on any funds placed on deposit.

(d) *Application Processing.* (1) Any timely submitted application will be reviewed by Commission staff for completeness and compliance with the Commission's rules. No untimely applications shall be reviewed or considered.

(2) An applicant will not be permitted to participate in competitive bidding if the application does not identify the applicant as required by the public notice announcing application procedures or does not include all required certifications, as of the deadline for submitting applications.

(3) An applicant will not be permitted to participate in competitive bidding if the applicant has not provided any bond or deposit of funds required pursuant to § 1.21001(c), as of the applicable deadline.

(4) An applicant may not make major modifications to its application after the deadline for submitting the application. An applicant will not be permitted to participate in competitive bidding if Commission staff determines that the application requires major modifications to be made after that deadline. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or transfer of control, or any changes in the identity

of the applicant, or any changes in the required certifications.

(5) An applicant may be permitted to make minor modifications to its application after the deadline for submitting applications. Minor modifications may be subject to a deadline specified by public notice. Minor modifications include correcting typographical errors and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(6) After receipt and review of the applications, an applicant that will be permitted participate in competitive bidding shall be identified in a public notice.

§ 1.21002 Prohibition of certain communications during the competitive bidding process.

(a) *Definition of Applicant.* For purposes of this paragraph, the term ''applicant'' shall include any applicant, each party capable of controlling the applicant, and each party that may be controlled by the applicant or by a party capable of controlling the applicant.

(b) *Certain Communications Prohibited.* After the deadline for submitting applications to participate, an applicant is prohibited from cooperating or collaborating with any other applicant with respect to its own, or one another's, or any other competing applicant's bids or bidding strategies, and is prohibited from communicating with any other applicant in any manner the substance of its own, or one another's, or any other competing applicant's bids or bidding strategies, until after the post-auction deadline for winning bidders to submit applications for support, unless such applicants are members of a joint bidding arrangement identified on the application pursuant to § 1.21001(b)(4).

(c) *Duty To Report Potentially Prohibited Communications.* An applicant that makes or receives communications that may be prohibited pursuant to this paragraph shall report such communications to the Commission staff immediately, and in any case no later than 5 business days after the communication occurs. An applicant's obligation to make such a report continues until the report has been made.

(d) *Procedures for Reporting Potentially Prohibited Communications.* Particular procedures for parties to report communications that may be prohibited under this rule may be established by public notice. If no such procedures are established by public notice, the party making the report shall do so in writing to the Chief of the Auctions and Spectrum Access Division by the most expeditious means available, including electronic transmission such as email.

§ 1.21003 Competitive bidding process.

(a) *Public Notice of Competitive Bidding Procedures.* Detailed competitive bidding procedures shall be established by public notice prior to the commencement of competitive bidding any time competitive bidding is conducted pursuant to this subpart.

(b) *Competitive Bidding Procedures.* The public notice detailing competitive bidding procedures may establish any of the following:

(1) Limits on the public availability of information regarding applicants, applications, and bids during a period of time covering the competitive bidding process, as well as procedures for parties to report the receipt of such non-public information during such periods;

(2) The way in which support may be made available for multiple identified areas by competitive bidding, *e.g.,* simultaneously or sequentially, and if the latter, in what grouping, if any, and order;

(3) The acceptable form for bids, including whether and how bids will be accepted on individual items and/or for combinations or packages of items;

(4) Reserve prices, either for discrete items or combinations or packages of items, as well as whether the reserve prices will be public or non-public during the competitive bidding process;

(5) The methods and times for submission of bids, whether remotely, by telephonic or electronic transmission, or in person;

(6) The number of rounds during which bids may be submitted, *e.g.,* one or more, and procedures for ending the bidding;

(7) Measurements of bidding activity in the aggregate or by individual applicants, together with requirements for minimum levels of bidding activity;

(8) Acceptable bid amounts at the opening of and over the course of bidding;

(9) Consistent with the public interest objectives of the competitive bidding, the process for reviewing bids and determining the winning bidders and the amount(s) of universal service support that each winning bidder may apply for, pursuant to applicable post-auction procedures;

(10) Procedures, if any, by which bidders may withdraw bids; and

(11) Procedures by which bidding may be delayed, suspended, or canceled before or after bidding begins for any reason that affects the fair and efficient conduct of the bidding, including natural disasters, technical failures, administrative necessity, or any other reason.

(c) *Apportioning Package Bids.* If the public notice establishing detailed competitive bidding procedures adopts procedures for bidding for support on combinations or packages of geographic areas, the public notice also shall establish a methodology for apportioning such bids among the geographic areas within the combination or package for purposes of implementing any Commission rule or procedure that requires a discrete bid for support in relation to a specific geographic area.

(d) *Public Notice of Competitive Bidding Results.* After the conclusion of competitive bidding, a public notice shall identify the winning bidders that may apply for the offered universal service support and the amount(s) of support for which they may apply, and shall detail the application procedures.

§ 1.21004 Winning bidder's obligation to apply for support

(a) *Timely and Sufficient Application.* A winning bidder has a binding obligation to apply for support by the applicable deadline. A winning bidder that fails to file an application by the applicable deadline or that for any reason is not subsequently authorized to receive support has defaulted on its bid.

(b) *Liability for Default Payment.* A winning bidder that defaults is liable for a default payment, which will be calculated by a method that will be established as provided in a public notice prior to competitive bidding. If the default payment is determined as a percentage of the defaulted bid amount, the default payment will not exceed twenty percent of the amount of the defaulted bid amount.

(c) *Additional Liabilities.* A winning bidder that defaults, in addition to being liable for a default payment, shall be subject to such measures as the Commission may provide, including but not limited to disqualification from future competitive bidding pursuant to this subpart AA, competitive bidding for universal service support.

PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 6. The authority citation for part 20 continues to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 301, 303, 316, and 332 unless otherwise noted. Section 20.12 is also issued under 47 U.S.C. 1302.

■ 7. Amend § 20.11 by revising paragraph (b) to read as follows:

§ 20.11 Interconnection to facilities of local exchange carriers.

* * * * *

(b) Local exchange carriers and commercial mobile radio service providers shall exchange Non-Access Telecommunications Traffic, as defined in § 51.701 of this chapter, under a bill-and-keep arrangement, as defined in § 51.713 of this chapter, unless they mutually agree otherwise.

* * * * *

PART 36—JURISDICTIONAL SEPARATIONS PROCEDURES; STANDARD PROCEDURES FOR SEPARATING TELECOMMUNICATIONS PROPERTY COSTS, REVENUES, EXPENSES, TAXES AND RESERVES FOR TELECOMMUNICATIONS COMPANIES

■ 8. The authority citation for part 36 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i) and (j), 205, 221(c), 254, 303(r), 403, 410, and 1302 unless otherwise noted.

Subpart A—General

■ 9. Add § 36.4 to subpart A to read as follows:

§ 36.4 Streamlining procedures for processing petitions for waiver of study area boundaries.

Effective January 1, 2012, local exchange carriers seeking a change in study area boundaries shall be subject to the following procedure:

(a) *Public Notice and Review Period.* Upon determination by the Wireline Competition Bureau that a petitioner has filed a complete petition for study area waiver and that the petition is appropriate for streamlined treatment, the Wireline Competition Bureau will issue a public notice seeking comment on the petition. Unless otherwise notified by the Wireline Competition Bureau, the petitioner is permitted to alter its study area boundaries on the 60th day after the reply comment due date, but only in accordance with the boundary changes proposed in its application.

(b) *Comment Cycle.* Comments on petitions for waiver may be filed during the first 30 days following public notice, and reply comments may be filed during the first 45 days following public notice, unless the public notice specifies a different pleading cycle. All comments on petitions for waiver shall be filed electronically, and shall satisfy such other filing requirements as may be specified in the public notice.

■ 10. Revise subpart F heading to read as follows:

Subpart F—High-Cost Loop Support

■ 11. Amend § 36.601 by adding the following two sentences at the end of paragraph (a) and removing paragraph (c) to read as follows:

§ 36.601 General

(a) * * * Effective January 1, 2012, this subpart will only apply to incumbent local exchange carriers that are rate-of-return carriers not affiliated, as ''affiliated companies'' are defined in § 32.9000 of this chapter, with price cap local exchange carriers. Rate-of-return carriers and price cap local exchange carriers are defined pursuant to § 54.5 and § 61.3(aa) of this chapter, respectively.

* * * * *

§ 36.602 [Removed]

■ 12. Section 36.602 is removed.

■ 13. Section 36.603 is amended by revising the section heading, and paragraph (a) to read as follows:

§ 36.603 Calculation of incumbent local exchange carrier portion of nationwide loop cost expense adjustment for rate-of-return carriers.

(a) Beginning January 1, 2003, the annual amount of the rural incumbent local exchange carrier portion of the nationwide loop cost expense adjustment calculated pursuant to this subpart F shall not exceed the amount of the total rural incumbent local exchange carrier loop cost expense adjustment for the immediately preceding calendar year, multiplied times one plus the Rural Growth Factor calculated pursuant to § 36.604. Beginning January 1, 2012, the total annual amount of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall not exceed the expense adjustment calculated for rate-of-return regulated carriers pursuant to this paragraph. Beginning January 1, 2012, rate-of-return local exchange carriers shall not include rate-of-return carriers affiliated with price cap local exchange carriers as set forth in § 36.601(a) of this subpart. Beginning January 1, 2013, and each calendar year thereafter, the total annual amount of the incumbent local exchange carrier portion of the nationwide loop cost expense adjustment shall not exceed the amount for the immediately preceding calendar year, multiplied times one plus the Rural Growth Factor calculated pursuant to § 36.604.

* * * * *

■ 14. Revise § 36.604 to read as follows:

§ 36.604 Calculation of the rural growth factor.

(a) Until July 30, 2012, the Rural Growth Factor (RGF) is equal to the sum of the annual percentage change in the United States Department of Commerce's Gross Domestic Product—Chained Price Index (GPD–CPI) plus the percentage change in the total number of rural incumbent local exchange carrier working loops during the calendar year preceding the July 31st filing submitted pursuant to § 36.611. The percentage change in total rural incumbent local exchange carrier working loops shall be based upon the difference between the total number of rural incumbent local exchange carrier working loops on December 31 of the calendar year preceding the July 31st filing and the total number of rural incumbent local exchange carrier working loops on December 31 of the second calendar year preceding that filing, both determined by the company's submissions pursuant to § 36.611. Loops acquired by rural incumbent local exchange carriers shall not be included in the RGF calculation.

(b) Beginning July 31, 2012, pursuant to § 36.601(a) of this subpart, the calculation of the Rural Growth Factor shall not include price cap carrier working loops and rate-of-return local exchange carrier working loops of companies that were affiliated with price cap carriers during the calendar year preceding the July 31st filing submitted pursuant to § 36.611.

■ 15. Amend § 36.605 by revising paragraphs (a) and (b), the heading of paragraph (c), and paragraph (c)(1) to read as follows:

§ 36.605 Calculation of safety net additive.

(a) *''Safety net additive support.''* Beginning January 1, 2012, only those local exchange carriers that qualified in 2010 or earlier, based on 2009 or prior year costs, shall be eligible to receive safety net additive pursuant to paragraph (c) of this section. Local exchange carriers shall not receive safety net additive for growth of Telecommunications Plant in Service in 2011, as compared to 2010. A local exchange carrier qualifying for safety net additive shall no longer receive safety net additive after January 1, 2012 unless the carrier's realized total growth in Telecommunications Plant in Service was more than 14 percent during the qualifying period, defined as 2010 or earlier, pursuant to paragraph (c) of this section. A local exchange carrier qualifying for safety net additive that fails to meet the requirements set forth

in the preceding sentence will receive 50 percent of the safety net additive that it otherwise would have received pursuant to this rule in 2012 and will cease to receive safety net additive in 2013 and thereafter.

(b) *Calculation of safety net additive support for companies that qualified prior to 2011:* Safety net additive support is equal to the amount of capped support calculated pursuant to this subpart F in the qualifying year minus the amount of support in the year prior to qualifying for support subtracted from the difference between the uncapped expense adjustment for the study area in the qualifying year minus the uncapped expense adjustment in the year prior to qualifying for support as shown in the following equation: Safety net additive support = (Uncapped support in the qualifying year—Uncapped support in the base year)—(Capped support in the qualifying year—Amount of support received in the base year).

(c) *Operation of safety net additive support for companies that qualified prior to 2011:* (1) In any year in which the total carrier loop cost expense adjustment is limited by the provisions of § 36.603 a rate-of-return incumbent local exchange carrier, as set forth in § 36.601(a) of this subpart, shall receive safety net additive support as calculated in paragraph (b) of this section, if in any study area, the rural incumbent local exchange carrier realizes growth in end of period Telecommunications Plant in Service (TPIS), as prescribed in § 32.2001 of this chapter, on a per loop basis, of at least 14 percent more than the study area's TPIS per loop investment at the end of the prior period.

* * * * *

■ 16. Amend § 36.611 by revising the first sentence of paragraph (h) to read as follows:

§ 36.611 Submission of information to the National Exchange Carrier Association (NECA).

* * * * *

(h) For incumbent local exchange carriers subject to § 36.601(a) this subpart, the number of working loops for each study area. * * *

■ 17. Amend § 36.612 by revising the first sentence of paragraph (a) introductory text to read as follows:

§ 36.612 Updating information submitted to the National Exchange Carrier Association.

(a) Any incumbent local exchange carrier subject to § 36.601(a) of this subpart may update the information submitted to the National Exchange Carrier Association (NECA) on July 31st pursuant to § 36.611 one or more times annually on a rolling year basis according to the schedule. * * *

* * * * *

■ 18. Amend § 36.621 by revising paragraph (a)(4) introductory text and adding paragraphs (a)(4)(iii), and (a)(5) to read as follows:

§ 36.621 Study area total unseparated loop cost.

(a) * * *

(4) Corporate Operations Expenses, Operating Taxes and the benefits and rent portions of operating expenses, as reported in § 36.611(e) attributable to investment in C&WF Category 1.3 and COE Category 4.13. This amount is calculated by multiplying the total amount of these expenses and taxes by the ratio of the unseparated gross exchange plant investment in C&WF Category 1.3 and COE Category 4.13, as reported in § 36.611(a), to the unseparated gross telecommunications plant investment, as reported in § 36.611(f). Total Corporate Operations Expense, for purposes of calculating universal service support payments beginning July 1, 2001 and ending December 31, 2011, shall be limited to the lesser of § 36.621(a)(4)(i) or (ii). Total Corporate Operations Expense for purposes of calculating universal service support payments beginning January 1, 2012 shall be limited to the lesser of § 36.621(a)(4)(i) or (iii).

* * * * *

(iii) A monthly per-loop amount computed according to paragraphs (a)(4)(iii)(A), (a)(4)(iii)(B), (a)(4)(iii)(C), and (a)(4)(iii)(D) of this section. To the extent that some carriers' corporate operations expenses are disallowed pursuant to these limitations, the national average unseparated cost per loop shall be adjusted accordingly.

(A) For study areas with 6,000 or fewer total working loops the amount monthly per working loop shall be $\$42.337 - (.00328 \times$ the number of total working loops), or, $63,000/the number of total working loops, whichever is greater;

(B) For study areas with more than 6,000 but fewer than 17,887 total working loops, the monthly amount per working loop shall be $3.007 + (117,990/the number of total working loops); and

(C) For study areas with 17,887 or more total working loops, the monthly amount per working loop shall be $9.562.

(D) Beginning January 1, 2013, the monthly per-loop amount computed according to paragraphs (a)(4)(iii)(A), (a)(4)(iii)(B), and (a)(4)(iii)(C) of this section shall be adjusted each year to reflect the annual percentage change in the United States Department of Commerce's Gross Domestic Product-Chained Price Index (GDP–CPI).

(5) Study area unseparated loop cost may be limited annually pursuant to a schedule announced by the Wireline Competition Bureau.

* * * * *

■ 19. Amend § 36.631 by revising the introductory text of paragraphs (c) and (d) to read as follows:

§ 36.631 Expense adjustment.

* * * * *

(c) Beginning January 1, 1988, for study areas reporting 200,000 or fewer working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (c)(1) through (2) of this section.

* * * * *

(d) Beginning January 1, 1998, for study areas reporting more than 200,000 working loops pursuant to § 36.611(h), the expense adjustment (additional interstate expense allocation) is equal to the sum of paragraphs (d)(1) through (4) of this section.

* * * * *

PART 51—INTERCONNECTION

■ 20. The authority citation for part 51 is revised to read as follows:

Authority: Sections 1–5, 7, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 706 of the Telecommunication Act of 1996, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 151–55, 157, 201–05, 207–09, 218, 220, 225–27, 251–54, 256, 271, 303(r), 332, 1302, 47 U.S.C. 157 *note,* unless otherwise noted.

Subpart H—Reciprocal Compensation for Transport and Termination of Telecommunications Traffic

■ 21. Add § 51.700 to subpart H to read as follows:

§ 51.700 Purpose of this subpart.

The purpose of this subpart, as revised in 2011 by FCC 11–161 is to establish rules governing the transition of intercarrier compensation from a calling-party's-network pays system to a default bill-and-keep methodology. Following the transition, the exchange of telecommunications traffic between and among service providers will, by default, be governed by bill-and-keep arrangements.

Note to § 51.700: See FCC 11–161, figure 9 (chart identifying steps in the transition).

■ 22. Revise § 51.701 paragraphs (a), (b) introductory text, add paragraph (b)(3) and revise paragraphs (c), (d), and (e) to read as follows:

§ 51.701 Scope of transport and termination pricing rules.

(a) Effective December 29, 2011, compensation for telecommunications traffic exchanged between two telecommunications carriers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access, is specified in subpart J of this part. The provisions of this subpart apply to Non-Access Reciprocal Compensation for transport and termination of Non-Access Telecommunications Traffic between LECs and other telecommunications carriers.

(b) *Non-Access Telecommunications Traffic.* For purposes of this subpart, Non-Access Telecommunications Traffic means:

* * * * *

(3) This definition includes telecommunications traffic exchanged between a LEC and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format and that otherwise meets the definitions in paragraphs (b)(1) or (b)(2) of this section. Telecommunications traffic originates and/or terminates in IP format if it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment.

(c) *Transport.* For purposes of this subpart, transport is the transmission and any necessary tandem switching of Non-Access Telecommunications Traffic subject to section 251(b)(5) of the Communications Act of 1934, as amended, 47 U.S.C. 251(b)(5), from the interconnection point between the two carriers to the terminating carrier's end office switch that directly serves the called party, or equivalent facility provided by a carrier other than an incumbent LEC.

(d) *Termination.* For purposes of this subpart, termination is the switching of Non-Access Telecommunications Traffic at the terminating carrier's end office switch, or equivalent facility, and delivery of such traffic to the called party's premises.

(e) *Non-Access Reciprocal Compensation.* For purposes of this subpart, a Non-Access Reciprocal Compensation arrangement between two carriers is either a bill-and-keep arrangement, per § 51.713, or an arrangement in which each carrier receives intercarrier compensation for the transport and termination of Non-Access Telecommunications Traffic.

■ 23. Revise § 51.703 to read as follows:

§ 51.703 Non-Access reciprocal compensation obligation of LECs.

(a) Each LEC shall establish Non-Access Reciprocal Compensation arrangements for transport and termination of Non-Access Telecommunications Traffic with any requesting telecommunications carrier.

(b) A LEC may not assess charges on any other telecommunications carrier for Non-Access Telecommunications Traffic that originates on the LEC's network.

(c) Notwithstanding any other provision of the Commission's rules, a LEC shall be entitled to assess and collect the full charges for the transport and termination of Non-Access Telecommunications Traffic, regardless of whether the local exchange carrier assessing the applicable charges itself delivers such traffic to the called party's premises or delivers the call to the called party's premises via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. 153(36), that does not itself seek to collect Non-Access Reciprocal Compensation charges for the transport and termination of that Non-Access Telecommunications Traffic. In no event may the total charges that a LEC may assess for such service to the called location exceed the applicable transport and termination rate. For purposes of this section, the facilities used by the LEC and affiliated or unaffiliated provider of interconnected VoIP service or a non-interconnected VoIP service for the transport and termination of such traffic shall be deemed an equivalent facility under § 51.701.

■ 24. Revise § 51.705 to read as follows:

§ 51.705 LECs' rates for transport and termination.

(a) Notwithstanding any other provision of the Commission's rules, by default, transport and termination for Non-Access Telecommunications Traffic exchanged between a local exchange carrier and a CMRS provider within the scope of § 51.701(b)(2) shall be pursuant to a bill-and-keep arrangement, as provided in § 51.713.

(b) Establishment of incumbent LECs' rates for transport and termination:

(1) This provision applies when, in the absence of a negotiated agreement between parties, state commissions establish Non-Access Reciprocal Compensation rates for the exchange of Non-Access Telecommunications Traffic between a local exchange carrier and a telecommunications carrier other than a CMRS provider where the incumbent local exchange carriers did not have any such rates as of December 29, 2011. Any rates established pursuant to this provision apply between December 29, 2011 and the date at which they are superseded by the transition specified in paragraphs (c)(2) through (c)(5) of this section.

(2) An incumbent LEC's rates for transport and termination of telecommunications traffic shall be established, at the election of the state commission, on the basis of:

(i) The forward-looking economic costs of such offerings, using a cost study pursuant to §§ 51.505 and 51.511; or

(ii) A bill-and-keep arrangement, as provided in § 51.713.

(3) In cases where both carriers in a Non-Access Reciprocal Compensation arrangement are incumbent LECs, state commissions shall establish the rates of the smaller carrier on the basis of the larger carrier's forward-looking costs, pursuant to § 51.711.

(c) Except as provided by paragraph (a) of this section, and notwithstanding any other provision of the Commission's rules, default transitional Non-Access Reciprocal Compensation rates shall be determined as follows:

(1) Effective December 29, 2011, no telecommunications carrier may increase a Non-Access Reciprocal Compensation for transport or termination above the level in effect on December 29, 2011. All Bill-and-Keep Arrangements in effect on December 29, 2011 shall remain in place unless both parties mutually agree to an alternative arrangement.

(2) Beginning July 1, 2012, if any telecommunications carrier's Non-Access Reciprocal Compensation rates in effect on December 29, 2011 or established pursuant to paragraph (b) of this section subsequent to December 29, 2011, exceed that carrier's interstate access rates for functionally equivalent services in effect in the same state on December 29, 2011, that carrier shall reduce its reciprocal compensation rate by one half of the difference between the Non-Access Reciprocal Compensation rate and the corresponding functionally equivalent interstate access rate.

(3) Beginning July 1, 2013, no telecommunications carrier's Non-Access Reciprocal Compensation rates shall exceed that carrier's tariffed interstate access rate in effect in the

same state on January 1 of that same year, for equivalent functionality.

(4) After July 1, 2018, all Price-Cap Local Exchange Carrier's Non-Access Reciprocal Compensation rates and all non-incumbent LECs that benchmark access rates to Price Cap Carrier shall be set pursuant to Bill-and-Keep arrangements for Non-Access Reciprocal Compensation as defined in this subpart.

(5) After July 1, 2020, all Rate-of-Return Local Exchange Carrier's Non-Access Reciprocal Compensation rates and all non-incumbent LECs that benchmark access rates to Rate-of-Return Carriers shall be set pursuant to Bill-and-Keep arrangements for Non-Access Reciprocal Compensation as defined in this subpart.

§ 51.707 [Removed and Reserved]

■ 25. Remove and reserve § 51.707.

■ 26. Revise § 51.709 to read as follows:

§ 51.709 Rate structure for transport and termination.

(a) In state proceedings, where a rate for Non-Access Reciprocal Compensation does not exist as of December 29, 2011, a state commission shall establish initial rates for the transport and termination of Non-Access Telecommunications Traffic that are structured consistently with the manner that carriers incur those costs, and consistently with the principles in this section.

(b) The rate of a carrier providing transmission facilities dedicated to the transmission of non-access traffic between two carriers' networks shall recover only the costs of the proportion of that trunk capacity used by an interconnecting carrier to send non-access traffic that will terminate on the providing carrier's network. Such proportions may be measured during peak periods.

(c) For Non-Access Telecommunications Traffic exchanged between a rate-of-return regulated rural telephone company as defined in § 51.5 and a CMRS provider, the rural rate-of-return incumbent local exchange carrier will be responsible for transport to the CMRS provider's interconnection point when it is located within the rural rate-of-return incumbent local exchange carrier's service area. When the CMRS provider's interconnection point is located outside the rural rate-of-return incumbent local exchange carrier's service area, the rural rate-of-return incumbent local exchange carrier's transport and provisioning obligation stops at its meet point and the CMRS provider is responsible for the remaining transport to its interconnection point. This paragraph (c) is a default provision and applicable in the absence of an existing agreement or arrangement otherwise.

■ 27. Revise § 51.711 paragraphs (a) introductory text, (a)(1) and (b) to read as follows:

§ 51.711 Symmetrical non-access reciprocal compensation.

(a) Rates for transport and termination of Non-Access Telecommunications Traffic shall be symmetrical, unless carriers mutually agree otherwise, except as provided in paragraphs (b) and (c) of this section.

(1) For purposes of this subpart, symmetrical rates are rates that a carrier other than an incumbent LEC assesses upon an incumbent LEC for transport and termination of Non-Access Telecommunications Traffic equal to those that the incumbent LEC assesses upon the other carrier for the same services.

* * * * *

(b) Except as provided in § 51.705, a state commission may establish asymmetrical rates for transport and termination of Non-Access Telecommunications Traffic only if the carrier other than the incumbent LEC (or the smaller of two incumbent LECs) proves to the state commission on the basis of a cost study using the forward-looking economic cost based pricing methodology described in §§ 51.505 and 51.511, that the forward-looking costs for a network efficiently configured and operated by the carrier other than the incumbent LEC (or the smaller of two incumbent LECs), exceed the costs incurred by the incumbent LEC (or the larger incumbent LEC), and, consequently, that such that a higher rate is justified.

* * * * *

■ 28. Revise § 51.713 to read as follows:

§ 51.713 Bill-and-keep arrangements.

Bill-and-keep arrangements are those in which carriers exchanging telecommunications traffic do not charge each other for specific transport and/or termination functions or services.

■ 29. Revise § 51.715 paragraphs (a) introductory text, (a)(1), (b) introductory text, (b)(2), and revise the first sentence in paragraph (d) to read as follows:

§ 51.715 Interim transport and termination pricing.

(a) Upon request from a telecommunications carrier without an existing interconnection arrangement with an incumbent LEC, the incumbent LEC shall provide transport and termination of Non-Access Telecommunications Traffic immediately under an interim arrangement, pending resolution of negotiation or arbitration regarding transport and termination rates and approval of such rates by a state commission under sections 251 and 252 of the Act.

(1) This requirement shall not apply when the requesting carrier has an existing interconnection arrangement that provides for the transport and termination of Non-Access Telecommunications Traffic by the incumbent LEC.

* * * * *

(b) Upon receipt of a request as described in paragraph (a) of this section, an incumbent LEC must, without unreasonable delay, establish an interim arrangement for transport and termination of Non-Access Telecommunications Traffic at symmetrical rates.

* * * * *

(2) In a state in which the state commission has not established transport and termination rates based on forward-looking economic cost studies, an incumbent LEC shall set interim transport and termination rates either at the default ceilings specified in § 51.705(c) or in accordance with a bill-and-keep methodology as defined in § 51.713.

* * * * *

(d) If the rates for transport and termination of Non-Access Telecommunications Traffic in an interim arrangement differ from the rates established by a state commission pursuant to § 51.705, the state commission shall require carriers to make adjustments to past compensation.

* * *

§ 51.717 [Removed and Reserved]

■ 30. Remove and reserve § 51.717.

■ 31. Add new subpart J to part 51 to read as follows:

Subpart J—Transitional Access Service Pricing

Sec.

Subpart J—Transitional Access Service Pricing

§ 51.901 Purpose and scope of transitional access service pricing rules.

(a) The purpose of this section is to establish rules governing the transition of intercarrier compensation from a calling-party's-network pays system to a default bill-and-keep methodology. Following the transition, the exchange of traffic between and among service providers will, by default, be governed by bill-and-keep arrangements.

(b) Effective December 29, 2011, the provisions of this subpart apply to reciprocal compensation for telecommunications traffic exchanged between telecommunications providers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access.

Note to § 51.901: See FCC 11–161, figure 9 (chart identifying steps in the transition).

§ 51.903 Definitions.

For the purposes of this subpart:

(a) *Competitive Local Exchange Carrier.* A *Competitive Local Exchange Carrier* is any local exchange carrier, as defined in § 51.5, that is not an incumbent local exchange carrier .

(b) *Composite Terminating End Office Access Rate* means terminating End Office Access Service revenue, calculated using demand for a given time period, divided by end office switching minutes for the same time period.

(c) *Dedicated Transport Access Service* means originating and terminating transport on circuits dedicated to the use of a single carrier or other customer provided by an incumbent local exchange carrier or any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier. *Dedicated Transport Access Service* rate elements for an incumbent local exchange carrier include the entrance facility rate elements specified in § 69.110 of this chapter, the dedicated transport rate elements specified in § 69.111 of this chapter, the direct-trunked transport rate elements specified in § 69.112 of this chapter, and the intrastate rate elements for functionally equivalent access services. Dedicated Transport Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access services.

(d) *End Office Access Service* means:

(1) The switching of access traffic at the carrier's end office switch and the delivery to or from of such traffic to the called party's premises;

(2) The routing of interexchange telecommunications traffic to or from the called party's premises, either directly or via contractual or other arrangements with an affiliated or unaffiliated entity, regardless of the specific functions provided or facilities used; or

(3) Any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier. End Office Access Service rate elements for an incumbent local exchange carrier include the local switching rate elements specified in § 69.106 of this chapter, the carrier common line rate elements specified in § 69.154 of this chapter, and the intrastate rate elements for functionally equivalent access services. End Office Access Service rate elements for an incumbent local exchange carrier also include any rate elements assessed on local switching access minutes, including the information surcharge and residual rate elements. End office Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.

Note to paragraph (d): For incumbent local exchange carriers, residual rate elements may include, for example, state Transport Interconnection Charges, Residual Interconnection Charges, and PICCs. For non-incumbent local exchange carriers, residual rate elements may include any functionally equivalent access service.

(e) *Fiscal Year 2011* means October 1, 2010 through September 30, 2011.

(f) *Price Cap Carrier* has the same meaning as that term is defined in § 61.3(aa) of this chapter.

(g) *Rate-of-Return Carrier* is any incumbent local exchange carrier not subject to price cap regulation as that term is defined in § 61.3(aa) of this chapter, but only with respect to the territory in which it operates as an incumbent local exchange carrier.

(h) *Access Reciprocal Compensation* means telecommunications traffic exchanged between telecommunications service providers that is interstate or intrastate exchange access, information access, or exchange services for such access, other than special access.

(i) *Tandem-Switched Transport Access Service* means:

(1) Tandem switching and common transport between the tandem switch and end office; or

(2) Any functional equivalent of the incumbent local exchange carrier access service provided by a non-incumbent local exchange carrier via other facilities. *Tandem-Switched Transport* rate elements for an incumbent local exchange carrier include the rate elements specified in § 69.111 of this chapter, except for the dedicated transport rate elements specified in that section, and intrastate rate elements for functionally equivalent service. Tandem Switched Transport Access Service rate elements for a non-incumbent local exchange carrier include any functionally equivalent access service.

(j) *Transitional Intrastate Access Service* means terminating End Office Access Service that was subject to intrastate access rates as of December 31, 2011; terminating Tandem-Switched Transport Access Service that was subject to intrastate access rates as of December 31, 2011; and originating and terminating Dedicated Transport Access Service that was subject to intrastate access rates as of December 31, 2011.

§ 51.905 Implementation.

(a) The rates set forth in this section are default rates. Notwithstanding any other provision of the Commission's rules, telecommunications carriers may agree to rates different from the default rates.

(b) LECs who are otherwise required to file tariffs are required to tariff rates no higher than the default transitional rates specified by this subpart.

(1) With respect to interstate switched access services governed by this subpart, LECs shall tariff rates for those services in their federal tariffs. Except as expressly superseded below, LECs shall follow the procedures specified in part 61 of this chapter when filing such tariffs.

(2) With respect to Transitional Intrastate Access Services governed by this subpart, LECs shall follow the procedures specified by relevant state law when filing such tariffs, price lists or other instrument (referred to collectively as ''tariffs'').

(c) Nothing in this section shall be construed to require a carrier to file or maintain a tariff or to amend an existing tariff if it is not otherwise required to do so under applicable law.

§ 51.907 Transition of price cap carrier access charges.

(a) Notwithstanding any other provision of the Commission's rules, on December 29, 2011, a Price Cap Carrier shall cap the rates for all interstate and intrastate rate elements for services contained in the definitions of Interstate End Office Access Services, Tandem Switched Transport Access Services, and Dedicated Transport Access Services. In addition, a Price Cap Carrier

shall also cap the rates for any interstate and intrastate rate elements in the traffic sensitive basket'' and the ''trunking basket'' as described in 47 CFR 61.42(d)(2) and (3) to the extent that such rate elements are not contained in the definitions of Interstate End Office Access Services, Tandem Switched Transport Access Services, and Dedicated Transport Access Services. Carriers will remove these services from price cap regulation in their July 1, 2012 annual tariff filing.

(b) *Step 1.* Beginning July 1, 2012, notwithstanding any other provision of the Commission's rules:

(1) Each Price Cap Carrier shall file tariffs, in accordance with § 51.905(b)(2), with the appropriate state regulatory authority, that set forth the rates applicable to Transitional Intrastate Access Service in each state in which it provides Transitional Intrastate Access Service.

(2) Each Price Cap Carrier shall establish the rates for Transitional Intrastate Access Service using the following methodology:

(i) Calculate total revenue from Transitional Intrastate Access Service at the carrier's interstate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand for each rate element.

(ii) Calculate total revenue from Transitional Intrastate Access Service at the carrier's intrastate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand for each rate element.

(iii) Calculate the Step 1 Access Revenue Reduction. The Step 1 Access Revenue Reduction is equal to one-half of the difference between the amount calculated in paragraph (b)(2)(i) of this section and the amount calculated in paragraph (b)(2)(ii) of this section.

(iv) A Price Cap Carrier may elect to establish rates for Transitional Intrastate Access Service using its intrastate access rate structure. Carriers using this option shall establish rates for Transitional Intrastate Access Service such that Transitional Intrastate Access Service revenue at the proposed rates is no greater than Transitional Intrastate Access Service revenue at the intrastate rates in effect as of December 29, 2011 less the Step 1 Access Revenue Reduction, using Fiscal Year 2011 demand. Carriers electing to establish rates for Transitional Intrastate Access Service in this manner shall notify the appropriate state regulatory authority of their election in the filing required by § 51.907(b)(1).

(v) In the alternative, a Price Cap Carrier may elect to apply its interstate access rate structure and interstate rates to Transitional Intrastate Access Service. In addition to applicable interstate access rates, the carrier may, between July 1, 2012 and July 1, 2013, assess a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes (previously billed as intrastate access). The transitional per-minute charge shall be no greater than the Step 1 Access Revenue Reduction divided by Fiscal Year 2011 Transitional Intrastate Access Service end office switching minutes. Carriers electing to establish rates for Transitional Intrastate Access Service in this manner shall notify the appropriate state regulatory authority of their election in the filing required by § 51.907(b)(1).

(vi) Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions to increase such rates.

(c) *Step 2.* Beginning July 1, 2013, notwithstanding any other provision of the Commission's rules:

(1) Transitional Intrastate Access Service rates shall be no higher than the Price Cap Carrier's interstate access rates. Once the Price Cap Carrier's Transitional Intrastate Access Service rates are equal to its functionally equivalent interstate access rates, they shall be subject to the same rate structure and all subsequent rate and rate structure modifications. Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions to increase such rates.

(2) In cases where a Price Cap Carrier does not have intrastate rates that permit it to determine composite intrastate End Office Access Service rates, the carrier shall establish End Office Access Service rates such that the ratio between its composite intrastate End Office Access Service revenues and its total intrastate switched access revenues may not exceed the ratio between its composite interstate End Office Access Service revenues and its total interstate switched access revenues.

(3) Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions to increase such rates.

(d) *Step 3.* Beginning July 1, 2014, notwithstanding any other provision of the Commission's rules:

(1) A Price Cap Carrier shall establish separate originating and terminating rate elements for all per-minute components within interstate and intrastate End Office Access Service. For fixed charges, the Price Cap Carrier shall divide the rate between originating and terminating rate elements based on relative originating and terminating end office switching minutes. If sufficient originating and terminating end office switching minute data is not available, the carrier shall divide such charges equally between originating and terminating elements.

(2) Each Price Cap Carrier shall establish rates for interstate or intrastate terminating End Office Access Service using the following methodology:

(i) Each Price Cap Carrier shall calculate the 2011 Baseline Composite Terminating End Office Access Rate. The 2011 Baseline Composite Terminating End Office Access Rate means the Composite Terminating End Office Access Rate calculated using Fiscal Year 2011 demand and the End Office Access Service rates at the levels in effect on December 29, 2011.

(ii) Each Price Cap Carrier shall calculate its 2014 Target Composite Terminating End Office Access Rate. The 2014 Target Composite Terminating End Office Access Rate means $0.0007 per minute plus two-thirds of any difference between the 2011 Baseline Composite Terminating End Office Access Rate and $0.0007 per minute.

(iii) Beginning July 1, 2014, no Price Cap Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2014 Target Composite Terminating End Office Access Rate. In the alternative, any Price Cap Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2014 Target Composite Terminating End Office Access Rate.

(iv) Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions increasing such rates.

(e) *Step 4.* Beginning July 1, 2015, notwithstanding any other provision of the Commission's rules:

(1) Each Price Cap Carrier shall establish interstate or intrastate rates for terminating End Office Access Service using the following methodology:

(i) Each Price Cap Carrier shall calculate its 2015 Target Composite Terminating End Office Access Rate. The 2015 Target Composite Terminating End Office Access Rate means $0.0007

per minute plus one-third of any difference between the 2011 Composite Terminating End Office Access Rate and $0.0007 per minute.

(ii) Beginning July 1, 2015, no Price Cap Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2015 Target Composite Terminating End Office Access Rate. In the alternative, any Price Cap Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2015 Target Composite Terminating End Office Access Rate.

(2) Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(f) *Step 5.* Beginning July 1, 2016, notwithstanding any other provision of the Commission's rules, each Price Cap Carrier shall establish interstate and intrastate per minute terminating End Office Access Service rates such that its Composite Terminating End Office Access Service rate does not exceed $0.0007 per minute. Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(g) *Step 6.* Beginning July 1, 2017, notwithstanding any other provision of the Commission's rules:

(1) Each Price Cap Carrier shall, in accordance with a bill-and-keep methodology, refile its interstate access tariffs and any state tariffs, in accordance with § 51.905(b)(2), removing any intercarrier charges for terminating End Office Access Service.

(2) Each Price Cap Carrier shall establish, for interstate and intrastate terminating traffic traversing a tandem switch that the terminating carrier or its affiliates owns, Tandem-Switched Transport Access Service rates no greater than $0.0007 per minute.

(3) Nothing in this section obligates or allows a Price Cap Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(h) *Step 7.* Beginning July 1, 2018, notwithstanding any other provision of the Commission's rules, each Price Cap carrier shall, in accordance with bill-and-keep, as defined in § 51.713, revise and refile its interstate switched access tariffs and any state tariffs to remove any intercarrier charges applicable to terminating tandem-switched access service traversing a tandem switch that the terminating carrier or its affiliate owns.

§ 51.909 Transition of rate-of-return carrier access charges.

(a) Notwithstanding any other provision of the Commission's rules, on December 29, 2011, a Rate-of-Return Carrier shall:

(1) Cap the rates for all rate elements for services contained in the definitions of End Office Access Service, Tandem Switched Transport Access Service, and Dedicated Transport Access Service, as well as all other interstate switched access rate elements, in its interstate switched access tariffs at the rate that was in effect on the December 29, 2011; and

(2) Cap, in accordance with § 51.505(b)(2), the rates for rate all elements in its intrastate switched access tariffs associated with the provision of terminating End Office Access Service and terminating Tandem-Switched Transport Access Service at the rates that were in effect on the December 29, 2011,

(i) Using the terminating rates if specifically identified; or

(ii) Using the rate for the applicable rate element if the tariff does not distinguish between originating and terminating.

(3) Nothing in this section obligates or allows a Rate-of-Return Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(b) *Step 1.* Beginning July 1, 2012, notwithstanding any other provision of the Commission's rules:

(1) Each Rate-of-Return Carrier shall file intrastate access tariff provisions, in accordance with § 51.505(b)(2), that set forth the rates applicable to Transitional Intrastate Access Service in each state in which it provides Transitional Intrastate Access Service.

(2) Each Rate-of-Return Carrier shall establish the rates for Transitional Intrastate Access Service using the following methodology:

(i) Calculate total revenue from Transitional Intrastate Access Service at the carrier's interstate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand for each rate element.

(ii) Calculate total revenue from Transitional Intrastate Access Service at the carrier's intrastate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand for each rate element.

(iii) Calculate the Step 1 Access Revenue Reduction. The Step 1 Access Revenue Reduction is equal to one-half of the difference between the amount calculated in (b)(2)(i) of this section and the amount calculated in (b)(2)(ii) of this section.

(iv) A Rate-of-Return Carrier may elect to establish rates for Transitional Intrastate Access Service using its intrastate access rate structure. Carriers using this option shall establish rates for Transitional Intrastate Access Service such that Transitional Intrastate Access Service revenue at the proposed rates is no greater than Transitional Intrastate Access Service revenue at the intrastate rates in effect as of December 29, 2011 less the Step 1 Access Revenue Reduction, using Fiscal Year 2011 intrastate switched access demand. Carriers electing to establish rates for Transitional Intrastate Access Service in this manner shall notify the appropriate state regulatory authority of their election in the filing required by § 51.907(b)(1).

(v) In the alternative, a Rate-of-Return Carrier may elect to apply its interstate access rate structure and interstate rates to Transitional Intrastate Access Service. In addition to applicable interstate access rates, the carrier may, between July 1, 2012 and July 1, 2013, assess a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes (previously billed as intrastate access). The transitional per-minute charge shall be no greater than the Step 1 Access Revenue Reduction divided by Fiscal Year 2011 Transitional Intrastate Access Service end office switching minutes. Carriers electing to establish rates for Transitional Intrastate Access Service in this manner shall notify the appropriate state regulatory authority of their election in the filing required by § 51.907(b)(1).

(3) Nothing in this section obligates or allows a Rate-of-Return carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(c) *Step 2.* Beginning July 1, 2013, notwithstanding any other provision of the Commission's rules, Transitional Intrastate Access Service rates shall be no higher than the Rate-of-Return Carrier's interstate Terminating End Office Access Service and Terminating Tandem-Switched Transport Access Service rates and subject to the same rate structure and all subsequent rate and rate structure modifications.

(d) *Step 3.* Beginning July 1, 2014, notwithstanding any other provision of the Commission's rules:

(1) Notwithstanding the rate structure rules set forth in § 69.106 of this chapter or anything else in the Commission's rules, a Rate-of-Return Carrier shall establish separate originating and terminating interstate and intrastate rate elements for all components within interstate End Office Access Service. For fixed charges, the Rate-of-Return Carrier shall divide the amount based on relative originating and terminating end office switching minutes. If sufficient originating and terminating end office switching minute data is not available, the carrier shall divide such charges equally between originating and terminating elements.

(2) Nothing in this Step shall affect Tandem-Switched Transport Access Service or Dedicated Transport Access Service.

(3) Each Rate-of-Return Carrier shall establish rates for interstate and intrastate terminating End Office Access Service using the following methodology:

(i) Each Rate-of-Return Carrier shall calculate the 2011 Baseline Composite Terminating End Office Access Rate. The 2011 Baseline Composite Terminating End Office Access Rate means the Composite Terminating End Office Access Rate calculated using Fiscal Year 2011 interstate demand and the interstate End Office Access Service rates at the levels in effect on December 29, 2011.

(ii) Each Rate-of-Return Carrier shall calculate its 2014 interstate Target Composite Terminating End Office Access Rate. The 2014 interstate Target Composite Terminating End Office Access Rate means $0.005 per minute plus two-thirds of any difference between the 2011 Baseline Composite Terminating End Office Access Rate. and $0.005 per minute.

(iii) Beginning July 1, 2014, no Rate-of-Return Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2014 interstate Target Composite Terminating End Office Access Rate. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2014 interstate Target Composite Terminating End Office Access Rate.

(4) Nothing in this section obligates or allows a Rate-of-Return Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(e) *Step 4.* Beginning July 1, 2015, notwithstanding any other provision of the Commission's rules:

(1) Each Rate-of-Return Carrier shall establish rates for interstate and intrastate terminating End Office Access Service using the following methodology:

(i) Each Rate-of-Return Carrier shall calculate its 2015 interstate Target Composite Terminating End Office Access Rate. The 2015 interstate Target Composite Terminating End Office Access Rate means $0.005 per minute plus one-third of any difference between the 2011 Baseline Composite Terminating End Office Access Rate and $0.005 per minute.

(ii) Beginning July 1, 2015, no Rate-of-Return Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2015 Target Composite Terminating End Office Access Rate. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2015 interstate Target Composite Terminating End Office Access Rate.

(2) [Reserved]

(f) *Step 5.* Beginning July 1, 2016, notwithstanding any other provision of the Commission's rules, each Rate-of-Return Carrier shall establish interstate and intrastate per minute terminating End Office Access Service rates such that its Composite Terminating End Office Access Service rate does not exceed $0.005 per minute. Nothing in this section obligates or allows a Rate-of-Return Carrier that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(g) *Step 6.* Beginning July 1, 2017, notwithstanding any other provision of the Commission's rules:

(1) Each Rate-of-Return Carrier shall establish rates for terminating End Office Access Service using the following methodology:

(i) Each Rate-of-Return Carrier shall calculate its 2017 interstate Target Composite Terminating End Office Access Rate. The 2017 interstate Target Composite Terminating End Office Access Rate means $0.0007 per minute plus two-thirds of any difference between that carrier's Terminating End Office Access Service Rate as of July 1, 2016 and $0.0007 per minute.

(ii) Beginning July 1, 2017, no Rate-of-Return Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2017 interstate Target Composite Terminating End Office Access Rate. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2017 interstate Target Composite Terminating End Office Access Rate.

(2) [Reserved]

(h) *Step 7.* Beginning July 1, 2018, notwithstanding any other provision of the Commission's rules:

(1) Each Rate-of-Return Carrier shall establish rates for terminating End Office Access Service using the following methodology:

(i) Each Rate-of-Return Carrier shall calculate its 2018 interstate Target Composite Terminating End Office Access Rate. The 2018 interstate Target Composite Terminating End Office Access Rate means $0.0007 per minute plus one-third of any difference between that carrier's Terminating End Office Access Service Rate as of July 1, 2016 and $0.0007 per minute.

(ii) Beginning July 1, 2018, no Rate-of-Return Carrier's interstate or intrastate Composite Terminating End Office Access Rate shall exceed its 2018 interstate Target Composite Terminating End Office Access Rate. In the alternative, any Rate-of-Return Carrier may elect to implement a single per minute rate element for terminating End Office Access Service no greater than the 2018 interstate Target Composite Terminating End Office Access Rate.

(2) [Reserved]

(i) *Step 8.* Beginning July 1, 2019, notwithstanding any other provision of the Commission's rules, each Rate-of-Return Carrier shall establish interstate and intrastate rates for terminating End Office Access Service that do not exceed $0.0007 per minute.

(j) *Step 9.* Beginning July 1, 2020, notwithstanding any other provision of the Commission's rules, each Rate-of-Return Carrier shall, in accordance with a bill-and-keep methodology, revise and refile its federal access tariffs and any state tariffs to remove any intercarrier charges for terminating End Office Access Service.

(k) As set forth in FCC 11–161, states will facilitate implementation of changes to intrastate access rates to ensure compliance with the Order. Nothing in this section shall alter the authority of a state to monitor and oversee filing of intrastate tariffs.

§ 51.911 Access reciprocal compensation rates for competitive LECs.

(a) *Caps on Access Reciprocal Compensation and switched access rates.* Notwithstanding any other provision of the Commission's rules:

(1) In the case of Competitive LECs operating in an area served by a Price

Cap Carrier, no such Competitive LEC may increase the rate for any originating or terminating intrastate switched access service above the rate for such service in effect on December 29, 2011.

(2) In the case of Competitive LEC operating in an area served by an incumbent local exchange carrier that is a Rate-of-Return Carrier or Competitive LECs that are subject to the rural exemption in § 61.26(e) of this chapter, no such Competitive LEC may increase the rate for any originating or terminating intrastate switched access service above the rate for such service in effect on December 29, 2011, with the exception of intrastate originating access service. For such Competitive LECs, intrastate originating access service subject to this subpart shall remain subject to the same state rate regulation in effect December 31, 2011, as may be modified by the state thereafter.

(b) Beginning July 1, 2012, notwithstanding any other provision of the Commission's rules, each Competitive LEC that has tariffs on file with state regulatory authorities shall file intrastate access tariff provisions, in accordance with § 51.505(b)(2), that set forth the rates applicable to Transitional Intrastate Access Service in each state in which it provides Transitional Intrastate Access Service. Each Competitive Local Exchange Carrier shall establish the rates for Transitional Intrastate Access Service using the following methodology:

(1) Calculate total revenue from Transitional Intrastate Access Service at the carrier's interstate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand for each rate element.

(2) Calculate total revenue from Transitional Intrastate Access Service at the carrier's intrastate access rates in effect on December 29, 2011, using Fiscal Year 2011 intrastate switched access demand for each rate element.

(3) Calculate the Step 1 Access Revenue Reduction. The Step 1 Access Revenue Reduction is equal to one-half of the difference between the amount calculated in (b)(1) of this section and the amount calculated in (b)(2) of this section.

(4) A Competitive Local Exchange Carrier may elect to establish rates for Transitional Intrastate Access Service using its intrastate access rate structure. Carriers using this option shall establish rates for Transitional Intrastate Access Service such that Transitional Intrastate Access Service revenue at the proposed rates is no greater than Transitional Intrastate Access Service revenue at the intrastate rates in effect as of December 29, 2011 less the Step 1 Access Revenue Reduction, using Fiscal year 2011 intrastate switched access demand.

(5) In the alternative, a Competitive Local Exchange Carrier may elect to apply its interstate access rate structure and interstate rates to Transitional Intrastate Access Service. In addition to applicable interstate access rates, the carrier may assess a transitional per-minute charge on Transitional Intrastate Access Service end office switching minutes (previously billed as intrastate access). The transitional charge shall be no greater than the Step 1 Access Revenue Reduction divided by Fiscal year 2011 intrastate switched access demand

(6) Nothing in this section obligates or allows a Competitive LEC that has intrastate rates lower than its functionally equivalent interstate rates to make any intrastate tariff filing or intrastate tariff revisions raising such rates.

(c) Beginning July 1, 2013, notwithstanding any other provision of the Commission's rules, all Competitive Local Exchange Carrier Access Reciprocal Compensation rates for switched exchange access services subject to this subpart shall be no higher than the Access Reciprocal Compensation rates charged by the competing incumbent local exchange carrier, in accordance with the same procedures specified in § 61.26 of this chapter.

§ 51.913 Transition for VoIP–PSTN traffic.

(a) Access Reciprocal Compensation subject to this subpart exchanged between a local exchange carrier and another telecommunications carrier in Time Division Multiplexing (TDM) format that originates and/or terminates in IP format shall be subject to a rate equal to the relevant interstate access charges specified by this subpart. Telecommunications traffic originates and/or terminates in IP format if it originates from and/or terminates to an end-user customer of a service that requires Internet protocol-compatible customer premises equipment.

(b) Notwithstanding any other provision of the Commission's rules, a local exchange carrier shall be entitled to assess and collect the full Access Reciprocal Compensation charges prescribed by this subpart that are set forth in a local exchange carrier's interstate or intrastate tariff for the access services defined in § 51.903 regardless of whether the local exchange carrier itself delivers such traffic to the called party's premises or delivers the call to the called party's premises via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. 153(36), that does not itself seek to collect Access Reciprocal Compensation charges prescribed by this subpart for that traffic. This rule does not permit a local exchange carrier to charge for functions not performed by the local exchange carrier itself or the affiliated or unaffiliated provider of interconnected VoIP service or non-interconnected VoIP service. For purposes of this provision, functions provided by a LEC as part of transmitting telecommunications between designated points using, in whole or in part, technology other than TDM transmission in a manner that is comparable to a service offered by a local exchange carrier constitutes the functional equivalent of the incumbent local exchange carrier access service.

§ 51.915 Recovery mechanism for price cap carriers.

(a) *Scope.* This section sets forth the extent to which Price Cap Carriers may recover certain revenues, through the recovery mechanism outlined below, to implement reforms adopted in FCC 11–161 and as required by § 20.11(b) of this chapter, and §§ 51.705 and 51.907.

(b) *Definitions.* As used in this section and § 51.917, the following terms mean:

(1) *CALLS Study Area.* A *CALLS Study Area* means a Price Cap Carrier study area that participated in the CALLS plan at its inception. *See Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Low-Volume Long-Distance Users, Federal-State Joint Board on Universal Service,* Sixth Report and Order in CC Docket Nos. 96–262 and 94–1, Report and Order in CC Docket No. 99–249, Eleventh Report and Order in CC Docket No. 96–45, 15 FCC Rcd 12962 (2000).

(2) *CALLS Study Area Base Factor.* The *CALLS Study Area Base Factor* is equal to ninety (90) percent.

(3) *CMRS Net Reciprocal Compensation Revenues. CMRS Net Reciprocal Compensation Revenues* means the reduction in net reciprocal compensation revenues required by § 20.11 of this chapter associated with CMRS traffic as described in § 51.701(b)(2), which is equal to its Fiscal Year 2011 net reciprocal compensation revenues from CMRS carriers.

(4) *Expected Revenues for Access Recovery Charges. Expected Revenues for Access Recovery Charges* are calculated using the tariffed Access Recovery Charge rate for each class of service and the forecast demand for each class of service.

(5) *Initial Composite Terminating End Office Access Rate. Initial Composite Terminating End Office Access Rate* means Fiscal Year 2011 terminating interstate End Office Access Service revenue divided by Fiscal Year 2011 terminating interstate end office switching minutes.

(6) *Lifeline Customer.* A *Lifeline Customer* is a residential lifeline subscriber as defined by § 54.400(a) of this chapter that does not pay a Residential and/or Single-Line Business End User Common Line Charge.

(7) *Net Reciprocal Compensation. Net Reciprocal Compensation* means the difference between a carrier's reciprocal compensation revenues from non-access traffic less its reciprocal compensation payments for non-access traffic during a stated period of time. For purposes of the calculations made under §§ 51.915 and 51.917, the term does not include reciprocal compensation revenues for non-access traffic exchanged between Local Exchange Carriers and CMRS providers; recovery for such traffic is addressed separately in these sections.

(8) *Non-CALLS Study Area. Non-CALLS Study Area* means a Price Cap Carrier study area that did not participate in the CALLS plan at its inception.

(9) *Non-CALLS Study Area Base Factor.* The *Non-CALLS Study Area Base Factor* is equal to one hundred (100) percent for five (5) years beginning July 1, 2012. Beginning July 1, 2017, the *Non-CALLS Price Cap Carrier Base Factor* will be equal to ninety (90) percent.

(10) *Price Cap Carrier Traffic Demand Factor.* The *Price Cap Carrier Traffic Demand Factor,* as used in calculating eligible recovery, is equal to ninety (90) percent for the one-year period beginning July 1, 2012. It is reduced by ten (10) percent of its previous value in each subsequent annual tariff filing.

(11) *Rate Ceiling Component Charges.* The *Rate Ceiling Component Charges* consists of the federal end user common line charge and the Access Recovery Charge; the flat rate for residential local service (sometimes know as the ''1FR'' or ''R1'' rate), mandatory extended area service charges, and state subscriber line charges; per-line state high cost and/or state access replacement universal service contributions, state E911 charges, and state TRS charges.

(12) *Residential Rate Ceiling.* The *Residential Rate Ceiling,* which consists of the total of the Rate Ceiling Component Charges, is set at $30 per month. The *Residential Rate Ceiling* will be the higher of the rate in effect on January 1, 2012, or the rate in effect on January 1 in any subsequent year.

(13) *True-up Revenues for Access Recovery Charge. True-up revenues for Access Recovery Charge* are equal to Expected Access Recovery Charge Revenues minus ((projected demand minus actual realized demand for Access Recovery Charges) times the tariffed Access Recovery Charge). This calculation shall be made separately for each class of service and shall be adjusted to reflect any changes in tariffed rates for the Access Recovery Charge. Realized demand is the demand for which payment has been received, or has been made, as appropriate, by the time the true-up is made.

(c) 2011 *Price Cap Carrier Base Period Revenue.* 2011 Price Cap Carrier Base Period Revenue is equal to the sum of the following three components:

(1) Terminating interstate end office switched access revenues and interstate Tandem-Switched Transport Access Service revenues for Fiscal Year 2011 received by March 31, 2012;

(2) Fiscal Year 2011 revenues from Transitional Intrastate Access Service received by March 31, 2012; and

(3) Fiscal Year 2011 reciprocal compensation revenues received by March 31, 2012, less fiscal year 2011 reciprocal compensation payments made by March 31, 2012.

(d) *Eligible recovery for Price Cap Carriers.*

(1) Notwithstanding any other provision of the Commission's rules, a Price Cap Carrier may recover the amounts specified in this paragraph through the mechanisms described in paragraphs (e) and (f) of this section.

(i) Beginning July 1, 2012, a Price Cap Carrier's eligible recovery will be equal to the CALLS Study Area Base Factor and/or the Non-CALLS Study Area Base Factor, as applicable, multiplied by the sum of the following three components:

(A) The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) multiplied by the Price Cap Carrier Traffic Demand Factor;

(B) CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor; and

(C) A Price Cap Carrier's reductions in Fiscal Year 2011 net reciprocal compensation revenues resulting from rate reductions required by § 51.705, other than those associated with CMRS traffic as described in § 51.701(b)(2), which may be calculated in one of the following ways:

(1) Calculate the reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2012 multiply by the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(ii) Beginning July 1, 2013, a Price Cap Carrier's eligible recovery will be equal to the CALLS Study Area Base Factor and/or the Non-CALLS Study Area Base Factor, as applicable, multiplied by the sum of the following three components:

(A) The cumulative amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor; and

(B) CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor; and

(C) A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:

(1) Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand and then multiply by the Price Cap Carrier Traffic Demand Factor;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal

compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2013, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(iii) Beginning July 1, 2014, a Price Cap Carrier's eligible recovery will be equal to the CALLS Study Area Base Factor and/or the Non-CALLS Study Area Base Factor, as applicable, multiplied by the sum of the amounts in paragraphs (d)(1)(iii)(A) through (d)(1)(iii)(E), of this section, and then adding the amount in paragraph (d)(1)(iii)(F) of this section to that amount:

(A) The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor; and

(B) The reduction in interstate switched access revenues equal to the difference between the Initial Composite Terminating End Office Access Rate and the 2014 Target Composite Terminating End Office Access Rate determined pursuant to § 51.907(d) using 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(C) If the 2014 Intrastate Composite Terminating End Office Access Rate is higher than the 2014 Target Composite Terminating End Office Access Rate, the reduction in revenues equal to the difference between the intrastate 2014 Composite Terminating End Office Access Rate and the intrastate 2014 Target Composite Terminating End Office Access Rate determined pursuant to § 51.907(d) using Fiscal Year 2011 terminating intrastate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(D) CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor; and

(E) A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:

(1) Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2014, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(F) An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2012.

(iv) Beginning July 1, 2015, a Price Cap Carrier's eligible recovery will be equal to the CALLS Study Area Base Factor and/or the Non-CALLS Study Area Base Factor, as applicable, multiplied by the sum of the amounts in paragraphs (d)(1)(iv)(A) through (d)(1)(iv)(E) of this section and then adding the amount in paragraph (d)(1)(iv)(F) of this section to that amount:

(A) The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor;

(B) The reduction in interstate switched access revenues equal to the difference between the Initial Composite Terminating End Office Access Rate and the 2015 Target Composite Terminating End Office Access Rate determined pursuant to § 51.907(e) using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(C) If the 2014 Intrastate Composite Terminating End Office Access Rate is higher than the 2015 Target Composite Terminating End Office Access Rate, the reduction in intrastate switched access revenues equal to the difference between the intrastate 2014 Composite Terminating End Office Access Rate and the 2015 Target Composite Terminating End Office Access Rate determined pursuant to § 51.907(e) using Fiscal Year 2011 terminating intrastate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor; and

(D) CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor;

(E) A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:

(1) Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2015, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this

option, it may not change its election at a later date.

(F) An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2013.

(v) Beginning July 1, 2016, a Price Cap Carrier's eligible recovery will be equal to the CALLS Study Area Base Factor and/or the Non-CALLS Study Area Base Factor, as applicable, multiplied by the sum of the amounts in paragraphs (d)(1)(v)(A) through (d)(1)(v)(E), of this section and then adding the amount in paragraph (d)(1)(v)(F) of this section to that amount:

(A) The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor;

(B) The reduction in interstate switched access revenues equal to the difference between the Initial Composite Terminating End Office Access Rate and $0.0007 determined pursuant to § 51.907(f) using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(C) If the 2014 Intrastate Composite Terminating End Office Access Rate is higher than $0.0007, the reduction in revenues equal to the difference between the intrastate 2014 Composite Terminating End Office Access Rate and $0.0007 determined pursuant to § 51.907(f) using Fiscal Year 2011 terminating intrastate end office minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(D) CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor;

(E) A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:

(1) Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2016, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(F) An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2014.

(vi) Beginning July 1, 2017, a Price Cap Carrier's eligible recovery will be equal to ninety (90) percent of the sum of the amounts in paragraphs (d)(1)(vi) through (d)(1)(vi)(F) of this section, and then adding the amount in paragraph (d)(1)(vi)(G) f this section to that amount:

(A) The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor; and

(B) The reduction in interstate switched access revenues equal to the Initial Composite terminating End Office Access Rate using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(C) The reduction in revenues equal to the intrastate 2014 Composite terminating End Office Access Rate using Fiscal Year 2011 terminating intrastate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(D) The reduction in revenues resulting from reducing the terminating Tandem-Switched Transport Access Service rate to $0.0007 pursuant to § 51.907(g)(2) using Fiscal Year 2011 terminating tandem-switched minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(E) CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor; and

(F) A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:

(1) Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2017, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(G) An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2015.

(vii) Beginning July 1, 2018, a Price Cap Carrier's eligible recovery will be equal to ninety (90) percent of the sum of the amounts in paragraphs (d)(1)(vii)(A) though (d)(1)(vii)(G) of this section, and then adding the amount in paragraph (d)(1)(vii)(H) of this section to that amount:

(A) The amount of the reduction in Transitional Intrastate Access Service revenues determined pursuant to § 51.907(b)(2) and (c) multiplied by the Price Cap Carrier Traffic Demand Factor; and:

(B) The reduction in interstate switched access revenues equal to the Initial Composite terminating End Office Access Rate using Fiscal Year 2011 terminating interstate end office switching minutes, and then multiply

by the Price Cap Carrier Traffic Demand Factor;

(C) The reduction in revenues equal to the intrastate 2014 Composite terminating End Office Access Rate using Fiscal Year 2011 terminating intrastate end office switching minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(D) The reduction in revenues resulting from reducing the terminating Tandem-Switched Transport Access Service rate to $0.0007 pursuant to § 51.907(g)(2) using Fiscal Year 2011 terminating tandem-switched minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(E) The reduction in revenues resulting from moving from a terminating Tandem-Switched Transport Access Service rate tariffed at a maximum of $0.0007 to removal of intercarrier charges pursuant to § 51.907(h), if applicable, using Fiscal Year 2011 terminating tandem-switched minutes, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(F) CMRS Net Reciprocal Compensation Revenues multiplied by the Price Cap Carrier Traffic Demand Factor; and

(G) A Price Cap Carrier's cumulative reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:

(1) Calculate the cumulative reduction in Fiscal Year 2011 net reciprocal compensation revenue as a result of rate reductions required by § 51.705 using Fiscal Year 2011 reciprocal compensation demand, and then multiply by the Price Cap Carrier Traffic Demand Factor;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Calculate the difference between each of the composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2018, using the appropriate Fiscal Year 2011 demand, and then multiply by the Price Cap Carrier Traffic Demand Factor; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Price Cap Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(H) An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2016.

(viii) Beginning July 1, 2019, and in subsequent years, a Price Cap Carrier's eligible recovery will be equal to the amount calculated in paragraph (d)(1)(vii)(A) through (d)(1)(vii)(H) of this section before the application of the Price Cap Carrier Traffic Demand Factor applicable in 2018 multiplied by the appropriate Price Cap Carrier Traffic Demand Factor for the year in question, and then adding an amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1 two years earlier.

(2) If a Price Cap Carrier recovers any costs or revenues that are already being recovered as Eligible Recovery through Access Recovery Charges or the Connect America Fund from another source, that carrier's ability to recover reduced switched access revenue from Access Recovery Charges or the Connect America Fund shall be reduced to the extent it receives duplicative recovery.

(3) A Price Cap Carrier seeking revenue recovery must annually certify as part of its tariff filings to the Commission and to the relevant state commission that the carrier is not seeking duplicative recovery in the state jurisdiction for any Eligible Recovery subject to the recovery mechanism.

(e) *Access Recovery Charge.* (1) A charge that is expressed in dollars and cents per line per month may be assessed upon end users that may be assessed an end user common line charge pursuant to § 69.152 of this chapter, to the extent necessary to allow the Price Cap Carrier to recover some or all of its eligible recovery determined pursuant to paragraph (d) of this section, subject to the caps described in paragraph (e)(5) of this section. A Price Cap Carrier may elect to forgo charging some or all of the Access Recovery Charge.

(2) Total Access Recovery Charges calculated by multiplying the tariffed Access Recovery Charge by the projected demand for the year in question may not recover more than the amount of eligible recovery calculated pursuant to paragraph (d) of this section for the year beginning on July 1.

(3) For the purposes of this section, a Price Cap Carrier holding company includes all of its wholly-owned operating companies that are price cap incumbent local exchange carriers. A Price Cap Carrier Holding Company may recover the eligible recovery attributable to any price cap study areas operated by its wholly-owned operating companies through assessments of the Access Recovery Charge on end users in any price cap study areas operated by its wholly owned operating companies that are price cap incumbent local exchange carriers.

(4) *Distribution of Access Recovery Charges among lines of different types.* (i) A Price Cap Carrier holding company that does not receive ICC-replacement CAF support (whether because it elects not to or because it does not have sufficient eligible recovery after the Access Recovery Charge is assessed or imputed) may not recover a higher fraction of its total revenue recovery from Access Recovery Charges assessed on Residential and Single Line Business lines than:

(A) The number of Residential and Single-Line Business lines divided by

(B) The sum of the number of Residential and Single-Line Business lines and two (2) times the number of End User Common Line charges assessed on Multi-Line Business customers.

(ii) For purposes of this subpart, Residential and Single Line Business lines are lines (other than lines of Lifeline Customers) assessed the residential and single line business end user common line charge and lines assessed the non-primary residential end user common line charge.

(iii) For purposes of this subpart, Multi-Line Business Lines are lines assessed the multi-line business end user common line charge.

(5) Per-line caps and other limitations on Access Recovery Charges

(i) For each line other than lines of Lifeline Customers assessed a primary residential or single-line business end user common line charge or a non-primary residential end user common line charge pursuant to § 69.152 of this Chapter, a Price Cap Carrier may assess an Access Recovery Charge as follows:

(A) Beginning July 1, 2012, a maximum of $0.50 per month for each line;

(B) Beginning July 1, 2013, a maximum of $1.00 per month for each line;

(C) Beginning July 1, 2014, a maximum of $1.50 per month for each line;

(D) Beginning July 1, 2015, a maximum of $2.00 per month for each line; and

(E) Beginning July 1, 2016, a maximum of $2.50 per month for each line.

(ii) For each line assessed a multi-line business end user common line charge pursuant to § 69.152 of this chapter, a Price Cap Carrier may assess an Access Recovery Charge as follows:

(A) Beginning July 1, 2012, a maximum of $1.00 per month for each multi-line business end user common line charge assessed;

(B) Beginning July 1, 2013, a maximum of $2.00 per month for each multi-line business end user common line charge assessed;

(C) Beginning July 1, 2014, a maximum of $3.00 per month for each multi-line business end user common line charge assessed;

(D) Beginning July 1, 2015, a maximum of $4.00 per month for each multi-line business end user common line charge assessed; and

(E) Beginning July 1, 2016, a maximum of $5.00 per month for each multi-line business end user common line charge assessed.

(iii) The Access Recovery Charge allowed by paragraph (e)(5)(i) of this section may not be assessed to the extent that its assessment would bring the total of the Rate Ceiling Component Charges above the Residential Rate Ceiling on January 1 of that year. This limitation applies only to the first residential line obtained by a residential end user and does not apply to single-line business customers.

(iv) The Access Recovery Charge allowed by paragraph (e)(5)(ii) of this section may not be assessed to the extent that its assessment would bring the total of the multi-line business end user common line charge and the Access Recovery Charge above $12.20 per line.

(v) The Access Recovery Charge assessed on lines assessed the non-primary residential line end user common line charge in a study area may not exceed the Access Recovery Charge assessed on residential end-users' first residential line in that study area.

(vi) The Access Recovery Charge may not be assessed on lines of any Lifeline Customers.

(vii) If in any year, the Price Cap Carrier's Access Recovery Charge is not at its maximum, the succeeding year's Access Recovery Charge may not increase more than $.0.50 per line per month for charges assessed under paragraph (e)(5)(i) of this section or $1.00 per line per month for charges assessed under paragraph (e)(5)(ii) of this section.

(f) *Price Cap Carrier eligibility for CAF ICC Support.*

(1) A Price Cap Carrier shall elect in its July 1, 2012 access tariff filing whether it will receive CAF ICC Support under this paragraph. A Price Cap Carrier eligible to receive CAF ICC Support subsequently may elect at any time not to receive such funding. Once it makes the election not to receive CAFF ICC Support, it may not elect to receive such funding at a later date.

(2) Beginning July 1, 2012, a Price Cap Carrier may recover any eligible recovery allowed by paragraph (d) that it could not have recovered through charges assessed pursuant to paragraph (e) of this section from CAF ICC Support pursuant to § 54.304. For this purpose, the Price Cap Carrier must impute the maximum charges it could have assessed under paragraph (e)of this section.

(3) Beginning July 1, 2017, a Price Cap Carrier may recover two-thirds (⅔) of the amount it otherwise would have been eligible to recover under paragraph (f)(2) from CAF ICC Support.

(4) Beginning July 1, 2018, a Price Cap Carrier may recover one-third (1/3) of the amount it otherwise would have been eligible to recover under paragraph (f)(2) of this section from CAF ICC Support.

(5) Beginning July 1, 2019, a Price Cap Carrier may no longer recover any amount related to revenue recovery under this paragraph from CAF ICC Support.

(6) A Price Cap Carrier that elects to receive CAF ICC support must certify with its 2012 annual access tariff filing and on April 1st of each subsequent year that it has complied with paragraphs (d) and (e) of this section, and, after doing so, is eligible to receive the CAF ICC support requested pursuant to paragraph (f) of this section.

§ 51.917 Revenue recovery for Rate-of-Return Carriers.

(a) *Scope.* This section sets forth the extent to which Rate-of-Return Carriers may recover, through the recovery mechanism outlined in paragraphs (d) through (f) of this section, a portion of revenues lost due to rate reductions required by § 20.11(b) of this chapter, and §§ 51.705 and 51.909.

(b) *Definitions.*

(1) *2011 Interstate Switched Access Revenue Requirement. 2011 Interstate Switched Access Revenue Requirement means:*

(i) For a Rate-of-Return Carrier that participated in the NECA 2011 annual switched access tariff filing, its projected interstate switched access revenue requirement associated with the NECA 2011 annual interstate switched access tariff filing;

(ii) For a Rate-of-Return Carrier subject to § 61.38 of this chapter that filed its own annual access tariff in 2010 and did not participate in the NECA 2011 annual switched access tariff filing, its projected interstate switched access revenue requirement in its 2010 annual interstate switched access tariff filing; and

(iii) For a Rate-of-Return Carrier subject to § 61.39 of this chapter that filed its own annual switched access tariff in 2011, its historically-determined annual interstate switched access revenue requirement filed with its 2011 annual interstate switched access tariff filing.

(2) *Expected Revenues.* Expected Revenues from an access service are calculated using the default transition rate for that service specified by § 51.909 and forecast demand for that service. Expected Revenues from a non-access service are calculated using the default transition rate for that service specified by § 20.11 of this chapter or § 51.705 of this chapter and forecast net demand for that service.

(3) *Rate-of-Return Carrier Baseline Adjustment Factor.* The Rate-of-Return Carrier Baseline Adjustment Factor, as used in calculating eligible recovery for Rate-of-Return Carriers, is equal to ninety-five (95) percent for the period beginning July 1, 2012. It is reduced by five (5) percent of its previous value in each subsequent annual tariff filing.

(4) *Revenue Requirement.* Revenue Requirement is equal to a carrier's regulated operating costs plus an 11.25 percent return on a carrier's net rate base calculated in compliance with the provisions of parts 36, 65 and 69 of this chapter. For an average schedule carrier, its Revenue Requirement shall be equal to the average schedule settlements it received from the pool, adjusted to reflect an 11.25 percent rate of return, or what it would have received if it had been a participant in the pool. If the reference is to an operating segment, these references are to the Revenue Requirement associated with that segment.

(5) *True-up Adjustment.* The True-up Adjustment is equal to the Expected Revenues less the True-up Revenues for any particular service for the period in question.

(6) *True-up Revenues.* True-up Revenues from an access service are equal to Expected Revenues minus ((projected demand minus actual realized demand for that service) times the default transition rate for that service specified by § 51.909). True-up Revenues from a non-access service are equal to Expected Revenues minus ((projected demand minus actual

realized net demand for that service) times the default transition rate for that service specified by 20.11(b) of this chapter or 51.705). Realized demand is the demand for which payment has been received, or has been made, as appropriate, by the time the true-up is made.

(7) *2011 Rate-of-Return Carrier Base Period Revenue. 2011 Rate-of-Return Carrier Base Period Revenue* is the sum of:

(i) 2011 Interstate Switched Access Revenue Requirement;

(ii) Fiscal Year 2011 revenues from Transitional Intrastate Access Service received by March 31, 2012; and

(iii) Fiscal Year 2011 reciprocal compensation revenues received by March 31, 2012, less Fiscal Year 2011 reciprocal compensation payments paid and/or payable by March 31, 2012

(c) 2011 Rate-of-Return Carrier Base Period Revenue shall be adjusted to reflect the removal of any increases in revenue requirement or revenues resulting from access stimulation activity the Rate-of-Return Carrier engaged in during the relevant measuring period. A Rate-of-Return Carrier should make this adjustment for its initial July 1, 2012, tariff filing, but the adjustment may result from a subsequent Commission or court ruling.

(d) *Eligible Recovery for Rate-of-Return Carriers.*

(1) Notwithstanding any other provision of the Commission's rules, a Rate-of-Return Carrier may recover the amounts specified in this paragraph through the mechanisms described in paragraphs (e) and (f) of this section.

(i) Beginning July 1, 2012, a Rate-of-Return Carrier's eligible recovery will be equal to the Rate-of-Return Carrier Baseline Adjustment Factor multiplied by the sum of:

(A) The Fiscal Year 2011 revenues from Transitional Intrastate Access Service less the Expected Revenues from Transitional Intrastate Access Service for the year beginning July 1, 2012, reflecting the rate transition contained in § 51.909;

(B) 2011 Base Period Revenue Requirement less the Expected Revenues from interstate switched access for the year beginning July 1, 2012, reflecting the rate transition contained in § 51.909;

(C) CMRS Net Reciprocal Compensation Revenues; and

(D) A Rate-of-Return Carrier's reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) of this part resulting from rate reductions required by § 51.705, which may be calculated in one of the following ways:

(1) Fiscal Year 2011 net reciprocal compensation revenue less the Expected Revenues from net reciprocal compensation for the year beginning July 1, 2012, reflecting the rate reductions required by § 51.705;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Estimate the expected reduction in net reciprocal compensation for the year beginning July 1, 2012, by calculating the expected difference between the Fiscal Year 2011 composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2012 using projected 2012 demand; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Rate-of-Return Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(ii) Beginning July 1, 2013, a Rate-of-Return Carrier's eligible recovery will be equal to the Rate-of-Return Carrier Baseline Adjustment Factor multiplied by the sum of:

(A) The Fiscal Year 2011 revenues from Transitional Intrastate Access Service less the Expected Revenues from Transitional Intrastate Access Service for the year beginning July 1, 2013, reflecting the rate transition contained in § 51.909;

(B) 2011 Rate-of-Return Carrier Base Period Revenue Requirement less the Expected Revenues from interstate switched access for the year beginning July 1, 2013.

(C) CMRS Net Reciprocal Compensation Revenues;

(D) A Rate-of-Return Carrier's reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:

(1) Fiscal Year 2011 net reciprocal compensation revenue less the Expected Revenues from net reciprocal compensation for the year beginning July 1, 2013, reflecting the rate reductions required by 51.705;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Estimate the expected reduction in net reciprocal compensation for the year beginning July 1, 2013, by calculating the expected difference between the Fiscal Year 2011 composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2013 using projected 2013 demand; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Rate-of-Return Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(iii) Beginning July 1, 2014, a Rate-of-Return Carrier's eligible recovery will be equal to the Rate-of-Return Carrier Baseline Adjustment Factor multiplied by the sum of the amounts in paragraphs (d)(1)(iii)(A) through (d)(1)(iii)(D) of this section, and by adding the amount in paragraph (d)(1)(iii)(E) of this section to that amount:

(A) The Fiscal Year 2011 revenues from Transitional Intrastate Access Service less the Expected Revenues from Transitional Intrastate Access Service for the year beginning July 1, 2014, reflecting the rate transitions contained in § 51.909 (including the reduction in intrastate End Office Switched Access Service rates), adjusted to reflect the True-Up Adjustment for Transitional Intrastate Access Service for the year beginning July 1, 2012;

(B) 2011 Base Period Revenue Requirement less the Expected Revenues from interstate switched access for the year beginning July 1, 2014, adjusted to reflect the True-Up Adjustment for Interstate switched Access for the year beginning July 1, 2012;

(C) CMRS Net Reciprocal Compensation Revenues; and

(D) A Rate-of-Return Carrier's reductions in Fiscal Year 2011 net reciprocal compensation revenues other than those associated with CMRS traffic as described in § 51.701(b)(2) resulting from rate reductions required by § 51.705 may be calculated in one of the following ways:

(1) Fiscal Year 2011 net reciprocal compensation revenue less the Expected Revenues from net reciprocal compensation for the year beginning July 1, 2014, reflecting the rate reductions required by 51.705 adjusted to reflect the True-Up Adjustment for reciprocal compensation for the year beginning July 1, 2012;

(2) By using a composite reciprocal compensation rate as follows:

(i) Establish a composite reciprocal compensation rate for its Fiscal Year 2011 reciprocal compensation receipts and its Fiscal Year 2011 reciprocal compensation payments by dividing its Fiscal Year 2011 reciprocal compensation receipts and payments by their respective Fiscal Year 2011 demand;

(ii) Estimate the expected reduction in net reciprocal compensation for the year beginning July 1, 2014, by calculating the expected difference between the Fiscal Year 2011 composite reciprocal compensation rates and the target reciprocal compensation rate set forth in § 51.705 for the year beginning July 1, 2014, adjusted to reflect the True-Up Adjustment for reciprocal compensation for the year beginning July 1, 2012; or

(3) For the purpose of establishing its recovery for net reciprocal compensation, a Rate-of-Return Carrier may elect to forgo this step and receive no recovery for reductions in net reciprocal compensation. If a carrier elects this option, it may not change its election at a later date.

(E) An amount equal to True-up Revenues for Access Recovery Charges less Expected Revenues for Access Recovery Charges for the year beginning July 1, 2012.

(iv) Beginning July 1, 2015, and for all subsequent years, a Rate-of-Return Carrier's eligible recovery will be calculated by updating the procedures set forth in paragraph (d)(1)(iii) of this section for the period beginning July 1, 2014, to reflect the passage of an additional year in each subsequent year.

(v) If a Rate-of-Return Carrier receives payments for intrastate or interstate switched access services or for Access Recovery Charges after the period used to measure the adjustments to reflect the differences between estimated and actual revenues, it shall treat such payments as actual revenue in the year the payment is received and shall reflect this as an additional adjustment for that year.

(vi) If a Rate-of-Return Carrier receives or makes reciprocal compensation payments after the period used to measure the adjustments to reflect the differences between estimated and actual net reciprocal compensation revenues, it shall treat such amounts as actual revenues or payments in the year the payment is received or made and shall reflect this as an additional adjustment for that year.

(vii) If a Rate-of-Return Carrier recovers any costs or revenues that are already being recovered as Eligible Recovery through Access Recovery Charges or the Connect America Fund from another source, that carrier's ability to recover reduced switched access revenue from Access Recovery Charges or the Connect America Fund shall be reduced to the extent it receives duplicative recovery. A Rate-of-Return Carrier seeking revenue recovery must annually certify as part of its tariff filings to the Commission and to the relevant state commission that the carrier is not seeking duplicative recovery in the state jurisdiction for any Eligible Recovery subject to the recovery mechanism.

(e) *Access Recovery Charge.* (1) A charge that is expressed in dollars and cents per line per month may be assessed upon end users that may be assessed a subscriber line charge pursuant to § 69.104 of this chapter, to the extent necessary to allow the Rate-of-Return Carrier to recover some or all of its Eligible Recovery determined pursuant to paragraph (d) of this section, subject to the caps described in paragraph (e)(6) of this section. A Rate-of-Return Carrier may elect to forgo charging some or all of the Access Recovery Charge.

(2) Total Access Recovery Charges calculated by multiplying the tariffed Access Recovery Charge by the projected demand for the year may not recover more than the amount of eligible recovery calculated pursuant to paragraph (d) of this section for the year beginning on July 1.

(3) For the purposes of this section, a Rate-of-Return Carrier holding company includes all of its wholly-owned operating companies. A Rate-of-Return Carrier Holding Company may recover the eligible recovery attributable to any Rate-of-Return study areas operated by its wholly-owned operating companies that are Rate-of-Return incumbent local exchange carriers through assessments of the Access Recovery Charge on end users in any Rate-of-Return study areas operated by its wholly-owned operating companies that are Rate-of-Return incumbent local exchange carriers.

(4) Distribution of Access Recovery Charges among lines of different types

(i) A Rate-of-Return Carrier that does not receive ICC-replacement CAF support (whether because they elect not to or because they do not have sufficient eligible recovery after the Access Recovery Charge is assessed or imputed) may not recover a higher ratio of its total revenue recovery from Access Recovery Charges assessed on Residential and Single Line Business lines than the following ratio (using holding company lines):

(A) The number of Residential and Single-Line Business lines assessed an End User Common Line charge (excluding Lifeline Customers), divided by

(B) The sum of the number of Residential and Single-Line Business lines assessed an End User Common Line charge (excluding Lifeline Customers), and two (2) times the number of End User Common Line charges assessed on Multi-Line Business customers.

(5) For purposes of this subpart, Residential and Single Line Business lines are lines (other than lines of Lifeline Customers) assessed the residential and single line business end user common line charge.

(i) For purposes of this subpart, Multi-Line Business Lines are lines assessed the multi-line business end user common line charge.

(ii) [Reserved]

(6) *Per-line caps and other limitations on Access Recovery Charges.*

(i) For each line other than lines of Lifeline Customers assessed a primary residential or single-line business end user common line charge pursuant to § 69.104 of this chapter, a Rate-of-Return Carrier may assess an Access Recovery Charge as follows:

(A) Beginning July 1, 2012, a maximum of $0.50 per month for each line;

(B) Beginning July 1, 2013, a maximum of $1.00 per month for each line;

(C) Beginning July 1, 2014, a maximum of $1.50 per month for each line;

(D) Beginning July 1, 2015, a maximum of $2.00 per month for each line;

(E) Beginning July 1, 2016, a maximum of $2.50 per month for each line; and

(F) Beginning July 1, 2017, a maximum of $3.00 per month for each line.

(ii) For each line assessed a multi-line business end user common line charge pursuant to § 69.104 of this chapter, a Rate-of-Return Carrier may assess an Access Recovery Charge as follows:

(A) Beginning July 1, 2012, a maximum of $1.00 per month for each multi-line business end user common line charge assessed;

(B) Beginning July 1, 2013, a maximum of $2.00 per month for each

multi-line business end user common line charge assessed;

(C) Beginning July 1, 2014, a maximum of $3.00 per month for each multi-line business end user common line charge assessed;

(D) Beginning July 1, 2015, a maximum of $4.00 per month for each multi-line business end user common line charge assessed;

(E) Beginning July 1, 2016, a maximum of $5.00 per month for each multi-line business end user common line charge assessed; and

(F) Beginning July 1, 2017, a maximum of $6.00 per month for each multi-line business end user common line charge assessed.

(iii) The Access Recovery Charge allowed by paragraph (e)(6)(i) of this section may not be assessed to the extent that its assessment would bring the total of the Rate Ceiling Component Charges above the Residential Rate Ceiling. This limitation does not apply to single-line business customers.

(iv) The Access Recovery Charge allowed by paragraph (e)(6)(ii) of this section may not be assessed to the extent that its assessment would bring the total of the multi-line business end user common line charge and the Access Recovery Charge above $12.20 per line.

(v) The Access Recovery Charge may not be assessed on lines of Lifeline Customers.

(vi) If in any year, the Rate of return carriers' Access Recovery Charge is not at its maximum, the succeeding year's Access Recovery Charge may not increase more than $0.50 per line for charges under paragraph (e)(6)(i) of this section or $1.00 per line for charges assessed under paragraph (e)(6)(ii) of this section.

(vii) A Price Cap Carrier with study areas that are subject to rate-of-return regulation shall recover its eligible recovery for such study areas through the recovery procedures specified in this section. For that purpose, the provisions of paragraph (e)(3) of this section shall apply to the rate-of-return study areas if the applicable conditions in paragraph (e)(3) of this section are met.

(f) *Rate-of-Return Carrier eligibility for CAF ICC Recovery.* (1) A Rate-of-Return Carrier shall elect in its July 1, 2012 access tariff filing whether it will receive CAF ICC Support under this paragraph. A Rate-of-Return Carrier eligible to receive CAF ICC Support subsequently may elect at any time not to receive such funding. Once it makes the election not to receive CAF ICC Support, it may not elect to receive such funding at a later date.

(2) Beginning July 1, 2012, a Rate-of-Return Carrier may recover any eligible recovery allowed by paragraph (d) of this section that it could not have recovered through charges assessed pursuant to paragraph (e) of this section from CAF ICC Support pursuant to § 54.304. For this purpose, the Rate-of-Return Carrier must impute the maximum charges it could have assessed under paragraph (e) of this section.

(3) A Rate-of-Return Carrier that elects to receive CAF ICC support must certify with its 2012 annual access tariff filing and on April 1st of each subsequent year that it has complied with paragraphs (d) and (e), and, after doing so, is eligible to receive the CAF ICC support requested pursuant to paragraph (f) of this section.

§ 51.919 Reporting and monitoring.

(a) A Price Cap Carrier that elects to participate in the recovery mechanism outlined in § 51.915 shall, beginning in 2012, file with the Commission the data consistent with Section XIII (f)(3) of FCC 11–161 with its annual access tariff filing.

(b) A Rate-of-Return Carrier that elects to participate in the recovery mechanism outlined in § 51.917 shall file with the Commission the data consistent with Section XIII (f)(3) of FCC 11–161 with its annual interstate access tariff filing, or on the date such a filing would have been required if it had been required to file in that year.

PART 54—UNIVERSAL SERVICE

■ 32. The authority citation for part 54 is revised to read as follows:

Authority: 47 U.S.C. 151, 154(i), 201, 205, 214, 219, 220, 254, 303(r), 403, and 1302 unless otherwise noted.

Subpart A—General Information

■ 33. Amend § 54.5 by adding definitions of ''community anchor institutions,'' ''high-cost support,'' ''Tribal lands'' and ''unsubsidized competitor,'' and by revising the definition of ''rate-of-return carrier'' to read as follows:

§ 54.5 Terms and Definitions.

* * * * *

Community anchor institutions. For the purpose of high-cost support, ''community anchor institutions'' refers to schools, libraries, health care providers, community colleges, other institutions of higher education, and other community support organizations and entities.

* * * * *

High-cost support. ''High-cost support'' refers to those support mechanisms in existence as of October 1, 2011, specifically, high-cost loop support, safety net additive and safety valve provided pursuant to subpart F of part 36, local switching support pursuant to § 54.301, forward-looking support pursuant to § 54.309, interstate access support pursuant to §§ 54.800 through 54.809, and interstate common line support pursuant to §§ 54.901 through 54.904, support provided pursuant to §§ 51.915, 51.917, and 54.304, support provided to competitive eligible telecommunications carriers as set forth in § 54.307(e), Connect America Fund support provided pursuant to § 54.312, and Mobility Fund support provided pursuant to subpart L of this part.

* * * * *

Rate-of-return carrier. ''Rate-of-return carrier'' shall refer to any incumbent local exchange carrier not subject to price cap regulation as that term is defined in § 61.3(aa) of this chapter.

* * * * *

Tribal lands. For the purposes of high-cost support, ''Tribal lands'' include any federally recognized Indian Tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlements Act (85 Stat. 688) and Indian Allotments, *see* § 54.400(e), as well as Hawaiian Home Lands—areas held in trust for native Hawaiians by the state of Hawaii, pursuant to the Hawaiian Homes Commission Act, 1920, July 9, 1921, 42 Stat. 108, *et seq.,* as amended.

Unsubsidized competitor. An ''unsubsidized competitor'' is a facilities-based provider of residential fixed voice and broadband service that does not receive high-cost support.

* * * * *

■ 34. Revise § 54.7 to read as follows:

§ 54.7 Intended use of federal universal service support.

(a) A carrier that receives federal universal service support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended.

(b) The use of federal universal service support that is authorized by paragraph (a) of this section shall include investments in plant that can, either as built or with the addition of plant elements, when available, provide access to advanced telecommunications and information services.

Subpart B—Services Designated for Support

■ 35. Revise § 54.101 to read as follows:

§ 54.101 Supported services for rural, insular and high cost areas.

(a) *Services designated for support.* Voice telephony service shall be supported by federal universal service support mechanisms. The functionalities of eligible voice telephony services include voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation for qualifying low-income consumers (as described in subpart E of this part).

(b) An eligible telecommunications carrier must offer voice telephony service as set forth in paragraph (a) of this section in order to receive federal universal service support.

Subpart C—Carriers Eligible for Universal Service Support

■ 36. Revise § 54.202 to read as follows:

§ 54.202 Additional requirements for Commission designation of eligible telecommunications carriers.

(a) In order to be designated an eligible telecommunications carrier under section 214(e)(6), any common carrier in its application must:

(1)(i) Certify that it will comply with the service requirements applicable to the support that it receives.

(ii) Submit a five-year plan that describes with specificity proposed improvements or upgrades to the applicant's network throughout its proposed service area. Each applicant shall estimate the area and population that will be served as a result of the improvements.

(2) Demonstrate its ability to remain functional in emergency situations, including a demonstration that it has a reasonable amount of back-up power to ensure functionality without an external power source, is able to reroute traffic around damaged facilities, and is capable of managing traffic spikes resulting from emergency situations.

(3) Demonstrate that it will satisfy applicable consumer protection and service quality standards. A commitment by wireless applicants to comply with the Cellular Telecommunications and Internet Association's Consumer Code for Wireless Service will satisfy this requirement. Other commitments will be considered on a case-by-case basis.

(b) *Public Interest Standard.* Prior to designating an eligible telecommunications carrier pursuant to section 214(e)(6), the Commission determines that such designation is in the public interest.

(c) A common carrier seeking designation as an eligible telecommunications carrier under section 214(e)(6) for any part of Tribal lands shall provide a copy of its petition to the affected Tribal government and Tribal regulatory authority, as applicable, at the time it files its petition with the Federal Communications Commission. In addition, the Commission shall send any public notice seeking comment on any petition for designation as an eligible telecommunications carrier on Tribal lands, at the time it is released, to the affected Tribal government and Tribal regulatory authority, as applicable, by the most expeditious means available.

Subpart D—Universal Service Support for High-Cost Areas

■ 37. Amend § 54.301 by revising paragraph (a)(1), revising the first sentence of paragraph (b), and by revising the first sentence of paragraph (e)(1) to read as follows:

§ 54.301 Local switching support.

(a) * * *

(1) Beginning January 1, 1998 and ending December 31, 2011, an incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall receive support for local switching costs using the following formula: The carrier's projected annual unseparated local switching revenue requirement, calculated pursuant to paragraph (d) of this section, shall be multiplied by the local switching support factor. Beginning January 1, 2012 and ending June 30, 2012, a rate-of-return carrier, as that term is defined in § 54.5 of this chapter, that is an incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines and is not affiliated with a price cap carrier, as that term is defined in § 61.3(aa) of this chapter, shall receive support for local switching costs frozen at the same support level received for calendar year 2011, subject to true-up. For purposes of this section, local switching costs shall be defined as Category 3 local switching costs under part 36 of this chapter. Beginning January 1, 2012, no carrier that is a price cap carrier, as that term is defined in § 61.3(aa) of this chapter, or a rate-of-return carrier, as that term is defined in § 54.5 of this chapter, that is affiliated with a price cap carrier, shall receive local switching support. Beginning July 1, 2012, no carrier shall receive local switching support.

* * * * *

(b) *Submission of data to the Administrator.* Until October 1, 2011, each incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the projected total unseparated dollar amount assigned to each account listed below for the calendar year following each filing. * * *

* * * * *

(e) *True-up adjustment—(1) Submission of true-up data.* Until December 31, 2012, each incumbent local exchange carrier that has been designated an eligible telecommunications carrier and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the historical total unseparated dollar amount assigned to each account listed in paragraph (b) of this section for each calendar year no later than 12 months after the end of such calendar year.

* * *

* * * * *

■ 38. Add § 54.302 to subpart D to read as follows:

§ 54.302 Monthly per-line limit on universal service support.

(a) Beginning July 1, 2012 and until June 30, 2013, each study area's universal service monthly support (not including Connect America Fund support provided pursuant to § 54.304) on a per-line basis shall not exceed $250 per-line plus two-thirds of the difference between its uncapped per-line monthly support and $250. Beginning July 1, 2013 and until June 30, 2014, each study area's universal service monthly support on a per-line basis shall not exceed $250 per-line plus one third of the difference between its uncapped per-line monthly support and $250. Beginning July 1, 2014, each study area's universal service monthly per-line support shall not exceed $250.

(b) For purposes of this section, universal service support is defined as

the sum of the amounts calculated pursuant to §§ 36.605 and 36.631, of this chapter and §§ 54.301, 54.305, and 54.901 through .904. Line counts for purposes of this section shall be as of the most recent line counts reported pursuant to § 36.611(h) of this chapter.

(c) The Administrator, in order to limit support to $250 for affected carriers, shall reduce safety net additive support, high-cost loop support, safety valve support, and interstate common line support in proportion to the relative amounts of each support the study area would receive absent such limitation.

§ 54.303 [Removed]

■ 39. Section 54.303 is removed.

■ 40. Add § 54.304 to subpart D to read as follows:

§ 54.304 Administration of Connect America Fund Intercarrier Compensation Replacement.

(a) The Administrator shall administer CAF ICC support pursuant to § 51.915 and § 51.917 of this chapter.

(b) The funding period is the period beginning July 1 through June 30 of the following year.

(c) For price cap carriers that are eligible and elect, pursuant to § 51.915(f) of this chapter, to receive CAF ICC support, the following provisions govern the filing of data with the Administrator, the Commission, and the relevant state commissions and the payment by the Administrator to those carriers of CAF ICC support amounts that the carrier is eligible to receive pursuant to § 51.915 of this chapter.

(1) A price cap carrier seeking CAF ICC support pursuant to § 51.915 of this chapter shall file data with the Administrator, the Commission, and the relevant state commissions no later than June 30, 2012, for the first year, and no later than March 31, in subsequent years, establishing the amount of the price cap carrier's eligible CAF ICC funding during the upcoming funding period pursuant to § 51.915 of this chapter. The amount shall include any true-ups, pursuant to § 51.915 of this chapter, associated with an earlier funding period.

(2) The Administrator shall monthly pay each price cap carrier one-twelfth (1/12) of the amount the carrier is eligible to receive during that funding period.

(d) For rate-of-return carriers that are eligible and elect, pursuant to § 51.917(f) of this chapter, to receive CAF ICC support, the following provisions govern the filing of data with the Administrator, the Commission, and the relevant state commissions and the payment by the Administrator to those carriers of CAF ICC support amounts that the rate-of-return carrier is eligible to receive pursuant to § 51.917 of this chapter.

(1) A rate-of-return carrier seeking CAF ICC support shall file data with the Administrator, the Commission, and the relevant state commissions no later than June 30, 2012, for the first year, and no later than March 31, in subsequent years, establishing the rate-of-return carrier's projected eligibility for CAF ICC funding during the upcoming funding period pursuant to § 51.917 of this chapter. The projected amount shall include any true-ups, pursuant to § 51.917 of this chapter, associated with an earlier funding period.

(2) The Administrator shall monthly pay each rate-of-return carrier one-twelfth (1/12) of the amount the carrier is to be eligible to receive during that funding period.

■ 41. Amend § 54.305 by adding a sentence at the end of paragraph (a) and by adding a sentence at the beginning of paragraph (b) to read as follows:

§ 54.305 Sale or transfer of exchanges.

(a) * * * After December 31, 2011, the provisions of this section shall not be used to determine support for any price cap incumbent local exchange carrier or a rate-of-return carrier, as that term is defined in § 54.5 that is affiliated with a price cap incumbent local exchange carrier.

(b) Beginning January 1, 2012, any carrier subject to the provisions of this paragraph shall receive support pursuant to this paragraph or support based on the actual costs of the acquired exchanges, whichever is less. * * *

* * * * *

■ 42. Amend § 54.307 by adding paragraph (e) to read as follows:

§ 54.307 Support to a competitive eligible telecommunications carrier.

* * * * *

(e) *Support Beginning January 1, 2012.* Competitive eligible telecommunications carriers will, beginning January 1, 2012, receive support based on the methodology described in this paragraph and not based on paragraph (a) of this section.

(1) *Baseline Support Amount.* Each competitive eligible telecommunication carrier will have a ''baseline support amount'' equal to its total 2011 support in a given study area, or an amount equal to $3,000 times the number of reported lines for 2011, whichever is lower. Each competitive eligible telecommunications carrier will have a ''monthly baseline support amount'' equal to its baseline support amount divided by twelve.

(i) ''Total 2011 support'' is the amount of support disbursed to a competitive eligible telecommunication carrier for 2011, without regard to prior period adjustments related to years other than 2011 and as determined by the Administrator on January 31, 2012.

(ii) For the purpose of calculating the $3,000 per line limit, the average of lines reported by a competitive eligible telecommunication carrier pursuant to line count filings required for December 31, 2010, and December 31, 2011 shall be used.

(2) *Monthly Support Amounts.* Competitive eligible telecommunications carriers shall receive the following support amounts, except as provided in paragraphs (e)(3) through (e)(6) of this section.

(i) From January 1, 2012, to June 30, 2012, each competitive eligible telecommunications carrier shall receive its monthly baseline support amount each month.

(ii) From July 1, 2012 to June 30, 2013, each competitive eligible telecommunications carrier shall receive 80 percent of its monthly baseline support amount each month.

(iii) From July 1, 2013, to June 30, 2014, each competitive eligible telecommunications carrier shall receive 60 percent of its monthly baseline support amount each month.

(iv) From July 1, 2014, to June 30, 2015, each competitive eligible telecommunications carrier shall receive 40 percent of its monthly baseline support amount each month.

(v) From July 1, 2015, to June 30, 2016, each competitive eligible telecommunications carrier shall receive 20 percent of its monthly baseline support amount each month.

(vi) Beginning July 1, 2016, no competitive eligible telecommunications carrier shall receive universal service support pursuant to this section.

(3) *Delayed Phase Down for Remote Areas in Alaska.* Certain competitive eligible telecommunications carriers serving remote areas in Alaska shall have their support phased down on a later schedule than that described in paragraph (e)(2) of this section.

(i) *Remote Areas in Alaska.* For the purpose of this paragraph, ''remote areas in Alaska'' includes all of Alaska except;

(A) The ACS-Anchorage incumbent study area;

(B) The ACS-Juneau incumbent study area;

(C) The fairbankszone1 disaggregation zone in the ACS-Fairbanks incumbent study area; and

(D) The Chugiak 1 and 2 and Eagle River 1 and 2 disaggregation zones of

the Matunuska Telephone Association incumbent study area.

(ii) *Carriers Subject to Delayed Phase Down.* A competitive eligible telecommunications carrier shall be subject to the delayed phase down described in paragraph (e)(3) of this section to the extent that it serves remote areas in Alaska, and it certified that it served covered locations in its September 30, 2011, filing of line counts with the Administrator. To the extent a competitive eligible telecommunications carrier serving Alaska is not subject to the delayed phase down, it will be subject to the phase down of support on the schedule described in paragraph (e)(2) of this section.

(iii) *Baseline for Delayed Phase Down.* For purpose of the delayed phase down for remote areas in Alaska, the baseline amount shall be calculated in the same manner as described in paragraph (e)(1) of this section, except that support amounts from 2013 shall be used.

(iv) *Monthly Support Amounts.* Competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall receive the following support amounts, except as provided in paragraphs (e)(4) through (e)(6) of this section.

(A) From January 1, 2014, to June 30, 2014, each competitive eligible telecommunications carrier shall receive its monthly baseline support amount each month.

(B) From July 1, 2014 to June 30, 2015, each competitive eligible telecommunications carrier shall receive 80 percent of its monthly baseline support amount each month.

(C) From July 1, 2015, to June 30, 2016, each competitive eligible telecommunications carrier shall receive 60 percent of its monthly baseline support amount each month.

(D) From July 1, 2016, to June 30, 2017, each competitive eligible telecommunications carrier shall receive 40 percent of its monthly baseline support amount each month.

(E) From July 1, 2017, to June 30, 2018, each competitive eligible telecommunications carrier shall receive 20 percent of its monthly baseline support amount each month.

(F) Beginning July 1, 2018, no competitive eligible telecommunications carrier serving remote areas in Alaska shall receive universal service support pursuant to this section.

(v) *Interim Support for Remote Areas in Alaska.* From January 1, 2012, until December 31, 2013, competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall continue to receive support as calculated pursuant to paragraph (a) of this section, provided that the total amount of support for all such competitive eligible telecommunications carriers shall be capped.

(A) *Cap Amount.* The total amount of support available on an annual basis for competitive eligible telecommunications carriers subject to the delayed phase down for remote areas in Alaska shall be equal to the sum of ''total 2011 support,'' as defined in paragraph (e)(1)(i) of this section, received by all competitive eligible telecommunications carriers subject to the delayed phase down for serving remote areas in Alaska.

(B) *Reduction Factor.* To effectuate the cap, the Administrator shall apply a reduction factor as necessary to the support that would otherwise be received by all competitive eligible telecommunications carriers serving remote areas in Alaska subject to the delayed phase down. The reduction factor will be calculated by dividing the total amount of support available amount by the total support amount calculated for those carriers in the absence of the cap.

(4) *Further reductions.* If a competitive eligible telecommunications carrier ceases to provide services to high-cost areas it had previously served, the Commission may reduce its baseline support amount.

(5) *Implementation of Mobility Fund Phase II Required.* In the event that the implementation of Mobility Fund Phase II has not occurred by June 30, 2014, competitive eligible telecommunications carriers will continue to receive support at the level described in paragraph (e)(2)(iv) of this section until Mobility Fund Phase II is implemented. In the event that Mobility Fund Phase II for Tribal lands is not implemented by June 30, 2014, competitive eligible telecommunications carriers serving Tribal lands shall continue to receive support at the level described in paragraph (e)(2)(iv) of this section until Mobility Fund Phase II for Tribal lands is implemented, except that competitive eligible telecommunications carriers serving remote areas in Alaska and subject to paragraph (e)(3) of this section shall continue to receive support at the level described in paragraph (e)(3)(iv)(A) of this section.

(6) *Eligibility after Implementation of Mobility Fund Phase II.* If a competitive eligible telecommunications carrier becomes eligible to receive high-cost support pursuant to the Mobility Fund Phase II, it will cease to be eligible for phase-down support in the first month for which it receives Mobility Fund Phase II support.

(7) *Line Count Filings.* Competitive eligible telecommunications carriers, except those subject to the delayed phase down described in paragraph (e)(3) of this section, shall no longer be required to file line counts beginning January 1, 2012. Competitive eligible telecommunications carriers subject to the delayed phase down described in paragraph (e)(3) of this section shall no longer be required to file line counts beginning January 1, 2014.

■ 43. Amend § 54.309 by adding paragraph (d) to read as follows:

§ 54.309 Calculation and distribution of forward-looking support for non-rural carriers.

* * * * *

(d) *Support After December 31, 2011.* Beginning January 1, 2012, no carrier shall receive support under this rule.

§ 54.311 [Removed]

■ 44. Section 54.311 is removed.

■ 45. Section 54.312 is added to read as follows:

§ 54.312 Connect America Fund for Price Cap Territories—Phase I

(a) *Frozen High-Cost Support.* Beginning January 1, 2012, each price cap local exchange carrier and rate-of-return carrier affiliated with a price cap local exchange carrier will have a ''baseline support amount'' equal to its total 2011 support in a given study area, or an amount equal to $3,000 times the number of reported lines for 2011, whichever is lower. For purposes of this section, price cap carriers are defined pursuant to § 61.3(aa) of this chapter and affiliated companies are determined by § 32.9000 of this chapter. Each price cap local exchange carrier and rate-of-return carrier affiliated with a price cap local exchange carrier will have a ''monthly baseline support amount'' equal to its baseline support amount divided by twelve. Beginning January 1, 2012, on a monthly basis, eligible carriers will receive their monthly baseline support amount.

(1) ''Total 2011 support'' is the amount of support disbursed to a price cap local exchange carrier or rate-of-return carrier affiliated with a price cap local exchange carrier for 2011, without regard to prior period adjustments related to years other than 2011 and as determined by USAC on January 31, 2012.

(2) For the purpose of calculating the $3,000 per line limit, the average of lines reported by a price cap local

exchange carrier or rate-of-return carrier affiliated with a price cap local exchange carrier pursuant to line count filings required for December 31, 2010, and December 31, 2011 shall be used.

(3) A carrier receiving frozen high cost support under this rule shall be deemed to be receiving Interstate Access Support and Interstate Common Line Support equal to the amount of support the carrier to which the carrier was eligible under those mechanisms in 2011.

(b) *Incremental Support.* Beginning January 1, 2012, support in addition to baseline support defined in paragraph (a) of this section will be available for certain price cap local exchange carriers and rate-of-return carriers affiliated with price cap local exchange carriers as follows.

(1) For each carrier for which the Wireline Competition Bureau determines that it has appropriate data or for which it determines that it can make reasonable estimates, the Bureau will determine an average per-location cost for each wire center using a simplified cost-estimation function derived from the Commission's cost model. Incremental support will be based on the wire centers for which the estimated per-location cost exceeds the funding threshold. The funding threshold will be determined by calculating which funding threshold would allocate all available incremental support, if each carrier that would be offered incremental support were to accept it.

(2) An eligible telecommunications carrier accepting incremental support must deploy broadband to a number of unserved locations, as shown as unserved by fixed broadband on the then-current version of the National Broadband Map, equal to the amount of incremental support it accepts divided by $775.

(3) A carrier may elect to accept or decline incremental support. A holding company may do so on a holding-company basis on behalf of its operating companies that are eligible telecommunications carriers, whose eligibility for incremental support, for these purposes, shall be considered on an aggregated basis. A carrier must provide notice to the Commission, relevant state commissions, and any affected Tribal government, stating the amount of incremental support it wishes to accept and identifying the areas by wire center and census block in which the designated eligible telecommunications carrier will deploy broadband to meet its deployment obligation, or stating that it declines incremental support. Such notification must be made within 90 days of being notified of any incremental support for which it would be eligible. Along with its notification, a carrier accepting incremental support must also submit a certification that the locations to be served to satisfy the deployment obligation are shown as unserved by fixed broadband on the then-current version of the National Broadband Map; that, to the best of the carrier's knowledge, the locations are, in fact, unserved by fixed broadband; that the carrier's current capital improvement plan did not already include plans to complete broadband deployment within the next three years to the locations to be counted to satisfy the deployment obligation; and that incremental support will not be used to satisfy any merger commitment or similar regulatory obligation.

(4) An eligible telecommunications carrier must complete deployment of broadband to two-thirds of the required number of locations within two years of providing notification of acceptance of funding, and must complete deployment to all required locations within three years. To satisfy its deployment obligation, the eligible telecommunications carrier must offer broadband service to such locations of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including Voice over Internet Protocol, and with usage caps, if any, that are reasonably comparable to comparable offerings in urban areas.

■ 46. Revise § 54.313 to read as follows:

§ 54.313 Annual reporting requirements for high-cost recipients.

(a) Any recipient of high-cost support shall provide:

(1) A progress report on its five-year service quality improvement plan pursuant to § 54.202(a), including maps detailing its progress towards meeting its plan targets, an explanation of how much universal service support was received and how it was used to improve service quality, coverage, or capacity, and an explanation regarding any network improvement targets that have not been fulfilled in the prior calendar year. The information shall be submitted at the wire center level or census block as appropriate;

(2) Detailed information on any outage in the prior calendar year, as that term is defined in 47 CFR 4.5, of at least 30 minutes in duration for each service area in which an eligible telecommunications carrier is designated for any facilities it owns, operates, leases, or otherwise utilizes that potentially affect

(i) At least ten percent of the end users served in a designated service area; or

(ii) A 911 special facility, as defined in 47 CFR 4.5(e).

(iii) Specifically, the eligible telecommunications carrier's annual report must include information detailing:

(A) The date and time of onset of the outage;

(B) A brief description of the outage and its resolution;

(C) The particular services affected;

(D) The geographic areas affected by the outage;

(E) Steps taken to prevent a similar situation in the future; and

(F) The number of customers affected.

(3) The number of requests for service from potential customers within the recipient's service areas that were unfulfilled during the prior calendar year. The carrier shall also detail how it attempted to provide service to those potential customers;

(4) The number of complaints per 1,000 connections (fixed or mobile) in the prior calendar year;

(5) Certification that it is complying with applicable service quality standards and consumer protection rules;

(6) Certification that the carrier is able to function in emergency situations as set forth in § 54.202(a)(2);

(7) The company's price offerings in a format as specified by the Wireline Competition Bureau;

(8) The recipient's holding company, operating companies, affiliates, and any branding (a ''dba,'' or ''doing-business-as company'' or brand designation), as well as universal service identifiers for each such entity by Study Area Codes, as that term is used by the Administrator. For purposes of this paragraph, ''affiliates'' has the meaning set forth in section 3(2) of the Communications Act of 1934, as amended;

(9) To the extent the recipient serves Tribal lands, documents or information demonstrating that the ETC had discussions with Tribal governments that, at a minimum, included:

(i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;

(ii) Feasibility and sustainability planning;

(iii) Marketing services in a culturally sensitive manner;

(iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and

(v) Compliance with Tribal business and licensing requirements. Tribal

business and licensing requirements include business practice licenses that Tribal and non-Tribal business entities, whether located on or off Tribal lands, must obtain upon application to the relevant Tribal government office or division to conduct any business or trade, or deliver any goods or services to the Tribes, Tribal members, or Tribal lands. These include certificates of public convenience and necessity, Tribal business licenses, master licenses, and other related forms of Tribal government licensure.

(10) *Beginning April 1, 2013.* A letter certifying that the pricing of the company's voice services is no more than two standard deviations above the applicable national average urban rate for voice service, as specified in the most recent public notice issued by the Wireline Competition Bureau and Wireless Telecommunications Bureau; and

(11) *Beginning April 1, 2013.* The results of network performance tests pursuant to the methodology and in the format determined by the Wireline Competition Bureau, Wireless Telecommunications Bureau, and Office of Engineering and Technology and the information and data required by this paragraphs (a)(1) through (7) of this section separately broken out for both voice and broadband service.

(b) In addition to the information and certifications in paragraph (a) of this section, any recipient of incremental CAF Phase I support pursuant to § 54.312(b) shall provide:

(1) In its next annual report due after two years after filing a notice of acceptance of funding pursuant to § 54.312(b), a certification that the company has deployed to no fewer than two-thirds of the required number of locations; and

(2) In its next annual report due after three years after filing a notice of acceptance of funding pursuant to § 54.312(b), a certification that the company has deployed to all required locations and that it is offering broadband service of at least 4 Mbps downstream and 1 Mbps upstream, with latency sufficiently low to enable the use of real-time communications, including Voice over Internet Protocol, and with usage caps, if any, that are reasonably comparable to those in urban areas.

(c) In addition to the information and certifications in paragraph (a) of this section, price cap carriers that receive frozen high-cost support pursuant to § 54.312(a) shall provide:

(1) *By April 1, 2013.* A certification that frozen high-cost support the company received in 2012 was used consistent with the goal of achieving universal availability of voice and broadband;

(2) *By April 1, 2014.* A certification that at least one-third of the frozen-high cost support the company received in 2013 was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor;

(3) *By April 1, 2015.* A certification that at least two-thirds of the frozen-high cost support the company received in 2014 was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor; and

(4) *By April 1, 2016 and in subsequent years.* A certification that all frozen-high cost support the company received in the previous year was used to build and operate broadband-capable networks used to offer the provider's own retail broadband service in areas substantially unserved by an unsubsidized competitor.

(d) In addition to the information and certifications in paragraph (a) of this section, beginning April 1, 2013, price cap carriers receiving high-cost support to offset reductions in access charges shall provide a certification that the support received pursuant to § 54.304 in the prior calendar year was used to build and operate broadband-capable networks used to offer provider's own retail service in areas substantially unserved by an unsubsidized competitor.

(e) In addition to the information and certifications in paragraph (a) of this section, any recipient of CAF Phase II support shall provide:

(1) *In the calendar year no later than three years after implementation of CAF Phase II.* A certification that the company is providing broadband service to 85% of its supported locations at actual speeds of at least 4 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas as determined in an annual survey.

(2) *In the calendar year no later than five years after implementation of CAF Phase II.* A certification that the company is providing broadband service to 100% of its supported locations at actual speeds of at least 4 Mbps downstream/1 Mbps upstream, and a percentage of supported locations, to be specified by the Wireline Competition Bureau, at actual speeds of at least 6 Mbps downstream/1.5 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas as determined in an annual survey.

(3) *Beginning April 1, 2014.* A progress report on the company's five-year service quality plan pursuant to § 54.202(a), including the following information:

(i) A letter certifying that it is meeting the interim deployment milestones as set forth, and that it is taking reasonable steps to meet increased speed obligations that will exist for all supported locations at the expiration of the five-year term for CAF Phase II funding; and

(ii) The number, names, and addresses of community anchor institutions to which the ETC newly began providing access to broadband service in the preceding calendar year.

(f) In addition to the information and certifications in paragraph (a) of this section, any rate-of-return carrier shall provide:

(1) *Beginning April 1, 2014.* A progress report on its five-year service quality plan pursuant to § 54.202(a) that includes the following information:

(i) A letter certifying that it is taking reasonable steps to provide upon reasonable request broadband service at actual speeds of at least 4 Mbps downstream/1 Mbps upstream, with latency suitable for real-time applications, including Voice over Internet Protocol, and usage capacity that is reasonably comparable to comparable offerings in urban areas as determined in an annual survey, and that requests for such service are met within a reasonable amount of time; and

(ii) The number, names, and addresses of community anchor institutions to which the ETC newly began providing access to broadband service in the preceding calendar year.

(2) *Privately held rate-of-return carriers only.* A full and complete annual report of the company's financial condition and operations as of the end of the preceding fiscal year, which is audited and certified by an independent certified public accountant in a form satisfactory to the Commission, and accompanied by a report of such audit. The annual report shall include balance sheets, income statements, and cash flow statements along with necessary notes to clarify the financial statements. The income statements shall itemize revenue, including non-regulated revenue, by its sources.

(g) *Areas with No Terrestrial Backhaul.* Carriers without access to terrestrial backhaul that are compelled to rely exclusively on satellite backhaul in their study area must certify annually that no terrestrial backhaul options exist. Any such funding recipients must certify they offer broadband service at actual speeds of at least 1 Mbps downstream and 256 kbps upstream within the supported area served by satellite middle-mile facilities. To the extent that new terrestrial backhaul facilities are constructed, or existing facilities improve sufficiently to meet the relevant speed, latency and capacity requirements then in effect for broadband service supported by the CAF, within twelve months of the new backhaul facilities becoming commercially available, funding recipients must provide the certifications required in paragraphs (e) or (f) of this section in full. Carriers subject to this paragraph must comply with all other requirements set forth in the remaining paragraphs of this section.

(h) *Additional voice rate data.* All incumbent local exchange carrier recipients of high-cost support must report all of their flat rates for residential local service, as well as state fees as defined pursuant to § 54.318(e) of this subpart. Carriers must also report all rates that are below the local urban rate floor as defined in § 54.318 of this subpart, and the number of lines for each rate specified. Carriers shall report lines and rates in effect as of January 1.

(i) All reports pursuant to this section shall be filed with the Office of the Secretary of the Commission clearly referencing WC Docket No. 10–90, and with the Administrator, and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate.

(j) *Filing deadlines.* In order for a recipient of high-cost support to continue to receive support for the following calendar year, or retain its eligible telecommunications carrier designation, it must submit the annual reporting information required by this section no later than April 1, 2012, except as otherwise specified in this section to begin in a subsequent year, and thereafter annually by April 1 of each year. Eligible telecommunications carriers that file their reports after the April 1 deadline shall receive support pursuant to the following schedule:

(1) Eligible telecommunication carriers that file no later than July 1 shall receive support for the second, third and fourth quarters of the subsequent year.

(2) Eligible telecommunication carriers that file no later than October 1 shall receive support for the third and fourth quarters of the subsequent year.

(3) Eligible telecommunication carriers that file no later than January 1 of the subsequent year shall receive support for the fourth quarter of the subsequent year.

(k) This section does not apply to recipients that solely receive support from the Phase I Mobility Fund.

■ 47. Revise § 54.314 to read as follows:

§ 54.314 Certification of support for eligible telecommunications carriers.

(a) *Certification.* States that desire eligible telecommunications carriers to receive support pursuant to the high-cost program must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. High-cost support shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.

(b) *Carriers not subject to State jurisdiction.* An eligible telecommunications carrier not subject to the jurisdiction of a State that desires to receive support pursuant to the high-cost program must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carrier was used in the preceding calendar year and will be used in the coming calendar year only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. Support provided pursuant to the high-cost program shall only be provided to the extent that the carrier has filed the requisite certification pursuant to this section.

(c) *Certification format.* (1) A certification pursuant to this section may be filed in the form of a letter from the appropriate regulatory authority for the State, and must be filed with both the Office of the Secretary of the Commission clearly referencing WC Docket No. 10–90, and with the Administrator of the high-cost support mechanism, on or before the deadlines set forth in paragraph (d) of this section. If provided by the appropriate regulatory authority for the State, the annual certification must identify which carriers in the State are eligible to receive federal support during the applicable 12-month period, and must certify that those carriers only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. A State may file a supplemental certification for carriers not subject to the State's annual certification. All certificates filed by a State pursuant to this section shall become part of the public record maintained by the Commission.

(2) An eligible telecommunications carrier not subject to the jurisdiction of a State shall file a sworn affidavit executed by a corporate officer attesting that the carrier only used support during the preceding calendar year and will only use support in the coming calendar year for the provision, maintenance, and upgrading of facilities and services for which support is intended. The affidavit must be filed with both the Office of the Secretary of the Commission clearly referencing WC Docket No. 10–90, and with the Administrator of the high-cost universal service support mechanism, on or before the deadlines set forth in paragraph (d) of this section. All affidavits filed pursuant to this section shall become part of the public record maintained by the Commission.

(d) *Filing deadlines.* In order for an eligible telecommunications carrier to receive federal high-cost support, the State or the carrier, if not subject to the jurisdiction of a State, must file an annual certification, as described in paragraph (c) of this section, with both the Administrator and the Commission. Upon the filing of the certification described in this section, support shall be provided in accordance with the following schedule:

(1) *Certifications filed on or before October 1.* Carriers subject to certifications filed on or before October 1 shall receive support in the first, second, third, and fourth quarters of the succeeding year.

(2) *Certifications filed on or before January 1.* Carriers subject to certifications filed on or before January 1 shall receive support in the second, third, and fourth quarters of that year. Such carriers shall not receive support in the first quarter of that year.

(3) *Certifications filed on or before April 1.* Carriers subject to certifications filed on or before April 1 shall receive support in the third and fourth quarters of that year. Such carriers shall not receive support in the first or second quarters of that year.

(4) *Certifications filed on or before July 1.* Carriers subject to certifications filed on or before July 1 shall receive

support beginning in the fourth quarter of that year. Such carriers shall not receive support in the first, second, or third quarters of that year.

(5) Certifications filed after July 1. Carriers subject to certifications filed after July 1 shall not receive support in that year.

(6) *Newly designated eligible telecommunications carriers.* Notwithstanding the deadlines in paragraph (d) of this section, a carrier shall be eligible to receive support as of the effective date of its designation as an eligible telecommunications carrier under section 214(e)(2) or (e)(6) of the Act, provided that it files the certification described in paragraph (b) of this section or the state commission files the certification described in paragraph (a) of this section within 60 days of the effective date of the carrier's designation as an eligible telecommunications carrier. Thereafter, the certification required by paragraphs (a) or (b) of this section must be submitted pursuant to the schedule in paragraph (d) of this section.

§ 54.316 [Removed]

■ 48. Section 54.316 is removed.

■ 49. Add § 54.318 to subpart D to read as follows:

§ 54.318 High-cost support; limitations on high-cost support.

(a) Beginning July 1, 2012, each carrier receiving high-cost support in a study area under this subpart will receive the full amount of high-cost support it otherwise would be entitled to receive if its flat rate for residential local service plus state regulated fees as defined in paragraph (e) of this section exceeds a local urban rate floor representing the national average of local urban rates plus state regulated fees under the schedule specified in paragraph (f) of this section..

(b) Carriers whose flat rate for residential local service plus state regulated fees offered for voice service are below the specified local urban rate floor under the schedule below plus state regulated fees shall have high-cost support reduced by an amount equal to the extent to which its flat rate for residential local service plus state regulated fees are below the local urban rate floor, multiplied by the number of lines for which it is receiving support.

(c) This section will apply to rate-of-return carriers as defined in § 54.5 and carriers subject to price cap regulation as that term is defined in § 61.3 of this chapter.

(d) For purposes of this section, high-cost support is defined as the support available pursuant to § 36.631 of this chapter and support provided to carriers that formerly received support pursuant to § 54.309.

(e) *State regulated fees.* (1) Beginning on July 1, 2012, for purposes of calculating limitations on high-cost support under this section, state regulated fees shall be limited to state subscriber line charges, state universal service fees and mandatory extended area service charges, which shall be determined as part of a local rate survey, the results of which shall be published annually.

(2) Federal subscriber line charges shall not be included in calculating limitations on high-cost support under this section.

(f) *Schedule.* High-cost support will be limited where the flat rate for residential local service plus state regulated fees are below the local urban rate floor representing the national average of local urban rates plus state regulated fees under the schedule specified in this paragraph. To the extent end user rates plus state regulated fees are below local urban rate floors plus state regulated fees, appropriate reductions in high-cost support will be made by the Universal Service Administrative Company.

(1) Beginning on July 1, 2012, and ending June 30, 2013, the local urban rate floor shall be $10.

(2) Beginning on July 1, 2013, and ending June 30, 2014, the local urban rate floor shall be $14.

(3) Beginning July 1, 2014, and thereafter, the local urban rate floor will be announced annually by the Wireline Competition Bureau.

(g) Any reductions in high-cost support under this section will not be redistributed to other carriers that receive support pursuant to § 36.631 of this chapter.

■ 50. Add § 54.320 to subpart D to read as follows:

§ 54.320 Compliance and recordkeeping for the high-cost program.

(a) Eligible telecommunications carriers authorized to receive universal service high-cost support are subject to random compliance audits and other investigations to ensure compliance with program rules and orders.

(b) All eligible telecommunications carriers shall retain all records required to demonstrate to auditors that the support received was consistent with the universal service high-cost program rules. This documentation must be maintained for at least ten years from the receipt of funding. All such documents shall be made available upon request to the Commission and any of its Bureaus or Offices, the Administrator, and their respective auditors.

(c) Eligible telecommunications carriers authorized to receive high-cost support that fail to comply with public interest obligations or any other terms and conditions may be subject to further action, including the Commission's existing enforcement procedures and penalties, reductions in support amounts, potential revocation of ETC designation, and suspension or debarment pursuant to § 54.8.

Subpart H—Administration

■ 51. Amend § 54.702 by revising paragraphs (a), (b), (c), and (h) to read as follows:

§ 54.702 Administrator's functions and responsibilities.

(a) The Administrator, and the divisions therein, shall be responsible for administering the schools and libraries support mechanism, the rural health care support mechanism, the high-cost support mechanism, and the low income support mechanism.

(b) The Administrator shall be responsible for billing contributors, collecting contributions to the universal service support mechanisms, and disbursing universal service support funds.

(c) The Administrator may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress. Where the Act or the Commission's rules are unclear, or do not address a particular situation, the Administrator shall seek guidance from the Commission.

* * * * *

(h) The Administrator shall report quarterly to the Commission on the disbursement of universal service support program funds. The Administrator shall keep separate accounts for the amounts of money collected and disbursed for eligible schools and libraries, rural health care providers, low-income consumers, and high-cost and insular areas.

* * * * *

■ 52. Amend § 54.709 by adding three sentences to the end of paragraph (b) to read as follows:

§ 54.709 Computations of required contributions to universal service support mechanisms.

* * * * *

(b) * * * The Commission may instruct the Administrator to treat excess contributions in a manner other than as prescribed in this paragraph (b). Such instructions may be made in the form of a Commission Order or a public

notice released by the Wireline Competition Bureau. Any such public notice will become effective fourteen days after release of the public notice, absent further Commission action.

* * * * *

■ 53. Amend § 54.715 by revising paragraph (c) to read as follows:

§ 54.715 Administrative expenses of the Administrator.

* * * * *

(c) The Administrator shall submit to the Commission projected quarterly budgets at least sixty (60) days prior to the start of every quarter. The Commission must approve the projected quarterly budgets before the Administrator disburses funds under the federal universal service support mechanisms. The administrative expenses incurred by the Administrator in connection with the schools and libraries support mechanism, the rural health care support mechanism, the high-cost support mechanism, and the low income support mechanism shall be deducted from the annual funding of each respective support mechanism. The expenses deducted from the annual funding for each support mechanism also shall include the Administrator's joint and common costs allocated to each support mechanism pursuant to the cost allocation manual filed by the Administrator under § 64.903 of this chapter.

Subpart J—Interstate Access Universal Service Support Mechanism

■ 54. Amend § 54.801 by adding paragraph (f) to read as follows:

§ 54.801 General

* * * * *

(f) Beginning January 1, 2012, no incumbent or competitive eligible telecommunications carrier shall receive support pursuant to this subpart, nor shall any incumbent or competitive eligible telecommunications carrier be required to complete any filings pursuant to this subpart after March 31, 2012.

Subpart K—Interstate Common Line Support Mechanism for Rate-of-Return Carriers

■ 55. Amend § 54.901 by adding paragraphs (b)(4), (c) and (d) to read as follows:

§ 54.901 Calculation of Interstate Common Line Support.

* * * * *

(b) * * *

(4) Beginning January 1, 2012, competitive eligible telecommunications carriers shall not receive Interstate Common Line Support pursuant to this subpart and will instead receive support consistent with § 54.307(e).

(c) Beginning January 1, 2012, for purposes of calculating Interstate Common Line Support, corporate operations expense allocated to the Common Line Revenue Requirement, pursuant to § 69.409 of this chapter, shall be limited to the lesser of:

(1) The actual average monthly per-loop corporate operations expense; or

(2) A monthly per-loop amount computed pursuant to § 36.621(a)(4)(iii) of this chapter.

(d) *Support After December 31, 2011.* Notwithstanding paragraph (a) of this section, beginning January 1, 2012, no carrier that is a rate-of-return carrier, as that term is defined in § 54.5 affiliated with a price cap local exchange carrier, as that term is defined in § 61.3(aa) of this chapter, shall receive support under this subpart.

■ 56. Add subpart L to part 54 as follows:

Subpart L—Mobility Fund

Sec.

Subpart L—Mobility Fund

§ 54.1001 Mobility Fund—Phase I.

The Commission will use competitive bidding, as provided in part 1, subpart AA, of this chapter, to determine the recipients of support available through Phase I of the Mobility Fund and the amount(s) of support that they may receive for specific geographic areas, subject to applicable post-auction procedures.

§ 54.1002 Geographic areas eligible for support.

(a) Mobility Fund Phase I support may be made available for census blocks identified as eligible by public notice.

(b) Except as provided in § 54.1004, coverage units for purposes of conducting competitive bidding and disbursing support based on designated road miles will be identified by public notice for each census block eligible for support.

§ 54.1003 Provider eligibility.

(a) Except as provided in § 54.1004, an applicant shall be an Eligible Telecommunications Carrier in an area in order to receive Mobility Fund Phase I support for that area. The applicant's designation as an Eligible Telecommunications Carrier may be conditional subject to the receipt of Mobility Fund support.

(b) An applicant shall have access to spectrum in an area that enables it to satisfy the applicable performance requirements in order to receive Mobility Fund Phase I support for that area. The applicant shall certify, in a form acceptable to the Commission, that it has such access at the time it applies to participate in competitive bidding and at the time that it applies for support and that it will retain such access for five (5) years after the date on which it is authorized to receive support.

(c) An applicant shall certify that it is financially and technically qualified to provide the services supported by Mobility Fund Phase I in order to receive such support.

§ 54.1004 Service to Tribal Lands.

(a) A Tribally-owned or -controlled entity that has pending an application to be designated an Eligible Telecommunications Carrier may participate in any Mobility Fund Phase I auction, including any auction for support solely in Tribal lands, by bidding for support in areas located within the boundaries of the Tribal land associated with the Tribe that owns or controls the entity. To bid on this basis, an entity shall certify that it is a Tribally-owned or -controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. A Tribally-owned or -controlled entity shall receive Mobility Fund Phase I support only after it has become an Eligible Telecommunications Carrier.

(b) In any auction for support solely in Tribal lands, coverage units for purposes of conducting competitive bidding and disbursing support based on designated population will be identified by public notice for each census block eligible for support.

(c) Tribally-owned or -controlled entities may receive a bidding credit with respect to bids for support within the boundaries of associated Tribal lands. To qualify for a bidding credit, an applicant shall certify that it is a Tribally-owned or -controlled entity and identify the applicable Tribe and Tribal lands in its application to participate in the competitive bidding. An applicant that qualifies shall have its bid(s) for

support in areas within the boundaries of Tribal land associated with the Tribe that owns or controls the applicant reduced by twenty-five (25) percent or purposes of determining winning bidders without any reduction in the amount of support available.

(d) A winning bidder for support in Tribal lands shall notify and engage the Tribal governments responsible for the areas supported.

(1) A winning bidder's engagement with the applicable Tribal government shall consist, at a minimum, of discussion regarding:

(i) A needs assessment and deployment planning with a focus on Tribal community anchor institutions;

(ii) Feasibility and sustainability planning;

(iii) Marketing services in a culturally sensitive manner;

(iv) Rights of way processes, land use permitting, facilities siting, environmental and cultural preservation review processes; and

(v) Compliance with Tribal business and licensing requirements.

(2) A winning bidder shall notify the appropriate Tribal government of its winning bid no later than five (5) business days after being identified by public notice as a winning bidder.

(3) A winning bidder shall certify in its application for support that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1004(d)(1), at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

(4) A winning bidder for support in Tribal lands shall certify in its annual report, pursuant to § 54.1009(a)(5), and prior to disbursement of support, pursuant to § 54.1008(c), that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1004(d)(1), at a minimum, as well as any other issues specified by the Commission, and provide a summary of the results of such engagement. A copy of the certification and summary shall be sent to the appropriate Tribal officials when it is sent to the Commission.

§ 54.1005 Application process.

(a) *Application to Participate in Competitive Bidding for Mobility Fund Phase I Support.* In addition to providing information specified in § 1.21001(b) of this chapter and any other information required by the Commission, an applicant to participate in competitive bidding for Mobility Fund Phase I support also shall:

(1) Provide ownership information as set forth in § 1.2112(a) of this chapter;

(2) Certify that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1006 in each area for which it seeks support;

(3) Disclose its status as an Eligible Telecommunications Carrier in any area for which it will seek support or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any such area, and certify that the disclosure is accurate;

(4) Describe the spectrum access that the applicant plans to use to meet obligations in areas for which it will bid for support, including whether the applicant currently holds a license for or leases the spectrum, and certify that the description is accurate and that the applicant will retain such access for at least five (5) years after the date on which it is authorized to receive support;

(5) Certify that it will not bid on any areas in which it has made a public commitment to deploy 3G or better wireless service by December 31, 2012; and

(6) Make any applicable certifications required in § 54.1004.

(b) *Application by Winning Bidders for Mobility Fund Phase I Support.*

(1) *Deadline.* Unless otherwise provided by public notice, winning bidders for Mobility Fund Phase I support shall file an application for Mobility Fund Phase I support no later than 10 business days after the public notice identifying them as winning bidders.

(2) *Application Contents.*

(i) Identification of the party seeking the support, including ownership information as set forth in § 1.2112(a) of this chapter.

(ii) Certification that the applicant is financially and technically capable of meeting the public interest obligations of § 54.1006 in the geographic areas for which it seeks support.

(iii) Proof of the applicant's status as an Eligible Telecommunications Carrier or as a Tribal entity with a pending application to become an Eligible Telecommunications Carrier in any area for which it seeks support and certification that the proof is accurate.

(iv) A description of the spectrum access that the applicant plans to use to meet obligations in areas for which it is the winning bidder for support, including whether the applicant currently holds a license for or leases the spectrum, and a certification that the description is accurate and that the applicant will retain such access for at least five (5) years after the date on which it is authorized to receive support.

(v) A detailed project description that describes the network, identifies the proposed technology, demonstrates that the project is technically feasible, discloses the budget and describes each specific phase of the project, *e.g.,* network design, construction, deployment, and maintenance. The applicant shall indicate whether the supported network will provide third generation (3G) mobile service within the period prescribed by § 54.1006(a) or fourth generation (4G) mobile service within the period prescribed by § 54.1006(b).

(vi) Certifications that the applicant has available funds for all project costs that exceed the amount of support to be received from Mobility Fund Phase I and that the applicant will comply with all program requirements.

(vii) Any guarantee of performance that the Commission may require by public notice or other proceedings, including but not limited to the letters of credit required in § 54.1007, or a written commitment from an acceptable bank, as defined in § 54.1007(a)(1), to issue such a letter of credit.

(viii) Certification that the applicant will offer service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas for a period extending until five (5) years after the date on which it is authorized to receive support.

(ix) Any applicable certifications and showings required in § 54.1004.

(x) Certification that the party submitting the application is authorized to do so on behalf of the applicant.

(xi) Such additional information as the Commission may require.

(3) *Application Processing.* (i) No application will be considered unless it has been submitted in an acceptable form during the period specified by public notice. No applications submitted or demonstrations made at any other time shall be accepted or considered.

(ii) Any application that, as of the submission deadline, either does not identify the applicant seeking support as specified in the public notice announcing application procedures or does not include required certifications shall be denied.

(iii) An applicant may be afforded an opportunity to make minor modifications to amend its application or correct defects noted by the applicant, the Commission, the

Administrator, or other parties. Minor modifications include correcting typographical errors in the application and supplying non-material information that was inadvertently omitted or was not available at the time the application was submitted.

(iv) Applications to which major modifications are made after the deadline for submitting applications shall be denied. Major modifications include, but are not limited to, any changes in the ownership of the applicant that constitute an assignment or change of control, or the identity of the applicant, or the certifications required in the application.

(v) After receipt and review of the applications, a public notice shall identify each winning bidder that may be authorized to receive Mobility Fund Phase I support after the winning bidder submits a Letter of Credit and an accompanying opinion letter as required by § 54.1007, in a form acceptable to the Commission, and any final designation as an Eligible Telecommunications Carrier that any Tribally-owned or -controlled applicant may still require. Each such winning bidder shall submit a Letter of Credit and an accompanying opinion letter as required by § 54.1007, in a form acceptable to the Commission, and any required final designation as an Eligible Telecommunications Carrier no later than 10 business days following the release of the public notice.

(vi) After receipt of all necessary information, a public notice will identify each winning bidder that is authorized to receive Mobility Fund Phase I support.

§ 54.1006 Public interest obligations.

(a) *Deadline for Construction—3G networks.* A winning bidder authorized to receive Mobility Fund Phase I support that indicated in its application that it would provide third generation (3G) service on the supported network shall, no later than two (2) years after the date on which it was authorized to receive support, submit data from drive tests covering the area for which support was received demonstrating mobile transmissions supporting voice and data to and from the network covering 75% of the designated coverage units in the area deemed uncovered, or a higher percentage established by Public Notice prior to the competitive bidding, and meeting or exceeding the following:

(1) Outdoor minimum data transmission rates of 50 kbps uplink and 200 kbps downlink at vehicle speeds appropriate for the roads covered;

(2) Transmission latency low enough to enable the use of real time applications, such as VoIP.

(b) *Deadline for Construction—4G networks.* A winning bidder authorized to receive Mobility Fund Phase I support that indicated in its application that it would provide fourth generation (4G) service on the supported network shall, no later than three (3) years after the date on which it was authorized to receive support, submit data from drive tests covering the area for which support was received demonstrating mobile transmissions supporting voice and data to and from the network covering 75% of the designated coverage units in the area deemed uncovered, or an applicable higher percentage established by public notice prior to the competitive bidding, and meeting or exceeding the following:

(1) Outdoor minimum data transmission rates of 200 kbps uplink and 768 kbps downlink at vehicle speeds appropriate for the roads covered;

(2) Transmission latency low enough to enable the use of real time applications, such as VoIP.

(c) *Coverage Test Data.* Drive tests submitted in compliance with a recipient's public interest obligations shall cover roads designated in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's support. Scattered site tests submitted in compliance with a recipient's public interest obligations shall be in compliance with standards set forth in the public notice detailing the procedures for the competitive bidding that is the basis of the recipient's authorized support.

(d) *Collocation Obligations.* During the period when a recipient shall file annual reports pursuant to § 54.1009, the recipient shall allow for reasonable collocation by other providers of services that would meet the technological requirements of Mobility Fund Phase I on newly constructed towers that the recipient owns or manages in the area for which it receives support. In addition, during this period, the recipient may not enter into facilities access arrangements that restrict any party to the arrangement from allowing others to collocate on the facilities.

(e) *Voice and Data Roaming Obligations.* During the period when a recipient shall file annual reports pursuant to § 54.1009, the recipient shall comply with the Commission's voice and data roaming requirements that were in effect as of October 27, 2011, on networks that are built through Mobility Fund Phase I support.

(f) *Liability for Failing To Satisfy Public Interest Obligations.* A winning bidder authorized to receive Mobility Fund Phase I support that fails to comply with the public interest obligations in this paragraph or any other terms and conditions of the Mobility Fund Phase I support will be subject to repayment of the support disbursed together with an additional performance default payment. Such a winning bidder may be disqualified from receiving Mobility Fund Phase I support or other USF support. The additional performance default amount will be a percentage of the Mobility Fund Phase I support that the winning bidder has been and is eligible to request be disbursed to it pursuant to § 54.1008. The percentage will be determined as specified in the public notice detailing competitive bidding procedures prior to the commencement of competitive bidding. The percentage will not exceed twenty percent.

§ 54.1007 Letter of credit.

(a) Before being authorized to receive Mobility Fund Phase I support, a winning bidder shall obtain an irrevocable standby letter of credit which shall be acceptable in all respects to the Commission. Each winning bidder authorized to receive Mobility Fund Phase I support shall maintain its standby letter of credit or multiple standby letters of credit in an amount equal to the amount of Mobility Fund Phase I support that the winning bidder has been and is eligible to request be disbursed to it pursuant to § 54.1008 plus the additional performance default amount described in § 54.1006(f), until at least 120 days after the winning bidder receives its final distribution of support pursuant to § 54.1008(b)(3).

(1) The bank issuing the letter of credit shall be acceptable to the Commission. A bank that is acceptable to the Commission is

(i) Any United States Bank that

(A) Is among the 50 largest United States banks, determined on the basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit,

(B) Whose deposits are insured by the Federal Deposit Insurance Corporation, and

(C) Who has a long-term unsecured credit rating issued by Standard & Poor's of A- or better (or an equivalent rating from another nationally recognized credit rating agency); or

(ii) Any non-U.S. bank that

(A) Is among the 50 largest non-U.S. banks in the world, determined on the

basis of total assets as of the end of the calendar year immediately preceding the issuance of the letter of credit (determined on a U.S. dollar equivalent basis as of such date),

(B) Has a branch office in the District of Columbia or such other branch office agreed to by the Commission,

(C) Has a long-term unsecured credit rating issued by a widely-recognized credit rating agency that is equivalent to an A- or better rating by Standard & Poor's, and

(D) Issues the letter of credit payable in United States dollars.

(2) [Reserved]

(b) A winning bidder for Mobility Fund Phase I support shall provide with its Letter of Credit an opinion letter from its legal counsel clearly stating, subject only to customary assumptions, limitations, and qualifications, that in a proceeding under Title 11 of the United States Code, 11 U.S.C. 101 *et seq.* (the ''Bankruptcy Code''), the bankruptcy court would not treat the letter of credit or proceeds of the letter of credit as property of the winning bidder's bankruptcy estate under section 541 of the Bankruptcy Code.

(c) Authorization to receive Mobility Fund Phase I support is conditioned upon full and timely performance of all of the requirements set forth in § 54.1006 and any additional terms and conditions upon which the support was granted.

(1) Failure by a winning bidder authorized to receive Mobility Fund Phase I support to comply with any of the requirements set forth in § 54.1006 or any other term or conditions upon which support was granted, or its loss of eligibility for any reason for Mobility Fund Phase I support, will be deemed an automatic performance default, will entitle the Commission to draw the entire amount of the letter of credit, and may disqualify the winning bidder from the receipt of Mobility Fund Phase I support or additional USF support.

(2) A performance default will be evidenced by a letter issued by the Chief of either the Wireless Bureau or Wireline Bureau or their respective designees, which letter, attached to a standby letter of credit draw certificate, shall be sufficient for a draw on the standby letter of credit for the entire amount of the standby letter of credit.

§ 54.1008 Mobility Fund Phase I disbursements.

(a) A winning bidder for Mobility Fund Phase I support will be advised by public notice whether it has been authorized to receive support. The public notice will detail how disbursement will be made available.

(b) Mobility Fund Phase I support will be available for disbursement to authorized winning bidders in three stages.

(1) One-third of the total possible support, if coverage were to be extended to 100 percent of the units deemed unserved in the geographic area, when the winning bidder is authorized to receive support.

(2) One-third of the total possible support with respect to a specific geographic area when the recipient demonstrates coverage of 50 percent of the coverage requirements of § 54.1006(a) or (b), as applicable.

(3) The remainder of the total support, based on the final total units covered, when the recipient demonstrates coverage meeting the requirements of § 54.1006(a) or (b), as applicable.

(c) A recipient accepting a final disbursement for a specific geographic area based on coverage of less than 100 percent of the units in the area previously deemed unserved waives any claim for the remainder of potential Mobility Fund Phase I support with respect to that area.

(d) Prior to each disbursement request, a winning bidder for support in a Tribal land will be required to certify that it has substantively engaged appropriate Tribal officials regarding the issues specified in § 54.1004(d)(1), at a minimum, as well as any other issues specified by the Commission and to provide a summary of the results of such engagement.

(e) Prior to each disbursement request, a winning bidder will be required to certify that it is in compliance with all requirements for receipt of Mobility Fund Phase I support at the time that it requests the disbursement.

§ 54.1009 Annual reports.

(a) A winning bidder authorized to receive Mobility Fund Phase I support shall submit an annual report no later than April 1 in each year for the five years after it was so authorized. Each annual report shall include the following, or reference the inclusion of the following in other reports filed with the Commission for the applicable year:

(1) Electronic Shapefiles site coverage plots illustrating the area newly reached by mobile services at a minimum scale of 1:240,000;

(2) A list of relevant census blocks previously deemed unserved, with road miles and total resident population and resident population residing in areas newly reached by mobile services (based on Census Bureau data and estimates);

(3) If any such testing has been conducted, data received or used from drive tests, or scattered site testing in areas where drive tests are not feasible, analyzing network coverage for mobile services in the area for which support was received;

(4) Certification that the applicant offers service in supported areas at rates that are within a reasonable range of rates for similar service plans offered by mobile wireless providers in urban areas;

(5) Any applicable certifications and showings required in § 54.1004; and

(6) Updates to the information provided in § 54.1005(b)(2)(v).

(b) The party submitting the annual report must certify that they have been authorized to do so by the winning bidder.

(c) Each annual report shall be submitted to the Office of the Secretary of the Commission, clearly referencing WT Docket No. 10–208; the Administrator; and the relevant state commissions, relevant authority in a U.S. Territory, or Tribal governments, as appropriate.

§ 54.1010 Record retention for Mobility Fund Phase I.

A winning bidder authorized to receive Mobility Fund Phase I support and its agents are required to retain any documentation prepared for, or in connection with, the award of Mobility Fund Phase I support for a period of not less than ten (10) years after the date on which the winning bidder receives its final disbursement of Mobility Fund Phase I support.

PART 61—TARIFFS

■ 57. The authority citation for part 61 continues to read as follows:

Authority: Secs. 1, 4(i), 4(j), 201–205 and 403 of the Communications Act of 1934, as amended; 47 U.S.C. 151, 154(i), 154(j), 201–205 and 403, unless otherwise noted.

■ 58. Add § 61.3(bbb) to read as follows:

§ 61.3 Definitions.

* * * * *

(bbb) *Access stimulation.*

(1) A rate-of-return local exchange carrier or a Competitive Local Exchange Carrier engages in access stimulation when it satisfies the following two conditions:

(i) Has an access revenue sharing agreement, whether express, implied, written or oral, that, over the course of the agreement, would directly or indirectly result in a net payment to the other party (including affiliates) to the agreement, in which payment by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier is based on the billing or collection of

access charges from interexchange carriers or wireless carriers. When determining whether there is a net payment under this rule, all payments, discounts, credits, services, features, functions, and other items of value, regardless of form, provided by the rate-of-return local exchange carrier or Competitive Local Exchange Carrier to the other party to the agreement shall be taken into account; and

(ii) Has either an interstate terminating-to-originating traffic ratio of at least 3:1 in a calendar month, or has had more than a 100 percent growth in interstate originating and/or terminating switched access minutes of use in a month compared to the same month in the preceding year.

(2) The local exchange carrier will continue to be engaging in access stimulation until it terminates all revenue sharing arrangements covered in paragraph (a)(1)(i) of this section. A local exchange carrier engaging in access stimulation is subject to revised interstate switched access charge rules under § 61.38 and § 69.3(e)(12) of this chapter.

■ 59. Revise § 61.26 to read as follows:

§ 61.26 Tariffing of competitive interstate switched exchange access services.

(a) *Definitions.* For purposes of this section, the following definitions shall apply:

(1) *CLEC* shall mean a local exchange carrier that provides some or all of the interstate exchange access services used to send traffic to or from an end user and does not fall within the definition of ''incumbent local exchange carrier'' in 47 U.S.C. 251(h).

(2) *Competing ILEC* shall mean the incumbent local exchange carrier, as defined in 47 U.S.C. 251(h), that would provide interstate exchange access services, in whole or in part, to the extent those services were not provided by the CLEC.

(3) *Switched exchange access services* shall include:

(i) The functional equivalent of the ILEC interstate exchange access services typically associated with the following rate elements: Carrier common line (originating); carrier common line (terminating); local end office switching; interconnection charge; information surcharge; tandem switched transport termination (fixed); tandem switched transport facility (per mile); tandem switching;

(ii) The termination of interexchange telecommunications traffic to any end user, either directly or via contractual or other arrangements with an affiliated or unaffiliated provider of interconnected VoIP service, as defined in 47 U.S.C. 153(25), or a non-interconnected VoIP service, as defined in 47 U.S.C. 153(36), that does not itself seek to collect reciprocal compensation charges prescribed by this subpart for that traffic, regardless of the specific functions provided or facilities used.

(4) *Non-rural ILEC* shall mean an incumbent local exchange carrier that is not a *rural telephone company* under 47 U.S.C. 153(44).

(5) The *rate* for interstate switched exchange access services shall mean the composite, per-minute rate for these services, including all applicable fixed and traffic-sensitive charges.

(6) *Rural CLEC* shall mean a CLEC that does not serve (*i.e.,* terminate traffic to or originate traffic from) any end users located within either:

(i) Any incorporated place of 50,000 inhabitants or more, based on the most recently available population statistics of the Census Bureau or

(ii) An urbanized area, as defined by the Census Bureau.

(b) Except as provided in paragraphs (c), (e), and (g) of this section, a CLEC shall not file a tariff for its interstate switched exchange access services that prices those services above the higher of:

(1) The rate charged for such services by the competing ILEC or

(2) The lower of:

(i) The benchmark rate described in paragraph (c) of this section or

(ii) In the case of interstate switched exchange access service, the lowest rate that the CLEC has tariffed for its interstate exchange access services, within the six months preceding June 20, 2001.

(c) The benchmark rate for a CLEC's switched exchange access services will be the rate charged for similar services by the competing ILEC. If an ILEC to which a CLEC benchmarks its rates, pursuant to this section, lowers the rate to which a CLEC benchmarks, the CLEC must revise its rates to the lower level within 15 days of the effective date of the lowered ILEC rate.

(d) Except as provided in paragraph (g) of this section, and notwithstanding paragraphs (b) and (c) of this section, in the event that, after June 20, 2001, a CLEC begins serving end users in a metropolitan statistical area (MSA) where it has not previously served end users, the CLEC shall not file a tariff for its exchange access services in that MSA that prices those services above the rate charged for such services by the competing ILEC.

(e) Rural exemption. Except as provided in paragraph (g) of this section, and notwithstanding paragraphs (b) through (d) of this section, a rural CLEC competing with a non-rural ILEC shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the NECA access tariff, assuming the highest rate band for local switching. In addition to that NECA rate, the rural CLEC may assess a presubscribed interexchange carrier charge if, and only to the extent that, the competing ILEC assesses this charge. Beginning July 1, 2013, all CLEC reciprocal compensation rates for intrastate switched exchange access services subject to this subpart also shall be no higher than that NECA rate.

(f) If a CLEC provides some portion of the switched exchange access services used to send traffic to or from an end user not served by that CLEC, the rate for the access services provided may not exceed the rate charged by the competing ILEC for the same access services, except if the CLEC is listed in the database of the Number Portability Administration Center as providing the calling party or dialed number, the CLEC may assess a rate equal to the rate that would be charged by the competing ILEC for all exchange access services required to deliver interstate traffic to the called number.

(g) Notwithstanding paragraphs (b) through (e) of this section:

(1) A CLEC engaging in access stimulation, as that term is defined in § 61.3(bbb), shall not file a tariff for its interstate exchange access services that prices those services above the rate prescribed in the access tariff of the price cap LEC with the lowest switched access rates in the state.

(2) A CLEC engaging in access stimulation, as that term is defined in § 61.3(bbb), shall file revised interstate switched access tariffs within forty-five (45) days of commencing access stimulation, as that term is defined in § 61.3(bbb), or within forty-five (45) days of [date] if the CLEC on that date is engaged in access stimulation, as that term is defined in § 61.3(bbb).

■ 60. Revise § 61.39 paragraph (a) and add paragraph (g) to read as follows:

§ 61.39 Optional supporting information to be submitted with letters of transmittal for Access Tariff filings by incumbent local exchange carriers serving 50,000 or fewer access lines in a given study area that are described as subset 3 carriers in § 69.602.

(a*) Scope.* Except as provided in paragraph (g) of this section, This section provides for an optional method of filing for any local exchange carrier that is described as a subset 3 carrier in § 69.602 of this chapter, which elects to issue its own Access Tariff for a period commencing on or after April 1, 1989, and which serves 50,000 or fewer access lines in a study area as determined under § 36.611(a)(8) of this chapter. However, the Commission may require any carrier to submit such information as may be necessary for review of a tariff filing. This section (other than the preceding sentence of this paragraph) shall not apply to tariff filings of local exchange carriers subject to price cap regulation.

* * * * *

(g) A local exchange carrier otherwise eligible to file a tariff pursuant to this section may not do so if it is engaging in access stimulation, as that term is defined in § 61.3(bbb) of this part, and has not terminated its access revenue sharing agreement(s). A carrier so engaged must file interstate access tariffs in accordance with § 61.38, and § 69.3(e)(12)(1) of this chapter.

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 61. The authority citation for part 64 is revised to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 254(k), 227; secs. 403(b)(2)(B), (c), 1302, Pub. L. 104–104, 100 Stat. 56. Interpret or apply 47 U.S.C. 201, 218, 222, 225, 226, 207, 228, and 254(k) unless otherwise noted.

■ 62. In § 64.1600, redesignate paragraphs (f) through (j) as paragraphs (g) through (k) respectively and add new paragraph (f) to read as follows:

§ 64.1600 Definitions.

* * * * *

(f) Intermediate Provider. The term *Intermediate Provider* means any entity that carries or processes traffic that traverses or will traverse the PSTN at any point insofar as that entity neither originates nor terminates that traffic.

* * * * *

■ 63. Revise § 64.1601(a) to read as follows:

§ 64.1601 Delivery requirements and privacy restrictions.

(a) *Delivery.* Except as provided in paragraphs (d) and (e) of this section:

(1) Telecommunications carriers and providers of interconnected Voice over Internet Protocol (VoIP) services, in originating interstate or intrastate traffic on the public switched telephone network (PSTN) or originating interstate or intrastate traffic that is destined for the PSTN (collectively ''PSTN Traffic''), are required to transmit for all PSTN Traffic the telephone number received from or assigned to or otherwise associated with the calling party to the next provider in the path from the originating provider to the terminating provider. This provision applies regardless of the voice call signaling and transmission technology used by the carrier or VoIP provider. Entities subject to this provision that use Signaling System 7 (SS7) are required to transmit the calling party number (CPN) associated with all PSTN Traffic in the SS7 ISUP (ISDN User Part) CPN field to interconnecting providers, and are required to transmit the calling party's charge number (CN) in the SS7 ISUP CN field to interconnecting providers for any PSTN Traffic where CN differs from CPN. Entities subject to this provision who use multi-frequency (MF) signaling are required to transmit CPN, or CN if it differs from CPN, associated with all PSTN Traffic in the MF signaling automatic numbering information (ANI) field.

(2) Intermediate providers within an interstate or intrastate call path that originates and/or terminates on the PSTN must pass unaltered to subsequent providers in the call path signaling information identifying the telephone number, or billing number, if different, of the calling party that is received with a call. This requirement applies to SS7 information including but not limited to CPN and CN, and also applies to MF signaling information or other signaling information intermediate providers receive with a call. This requirement also applies to VoIP signaling messages, such as calling party and charge information identifiers contained in Session Initiation Protocol (SIP) header fields, and to equivalent identifying information as used in other VoIP signaling technologies, regardless of the voice call signaling and transmission technology used by the carrier or VoIP provider.

* * * * *

PART 69—ACCESS CHARGES

■ 64. The authority citation for part 69 continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403. 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

■ 65. Add paragraph (d) to § 69.1 to read as follows:

§ 69.1 Application of access charges.

* * * * *

(d) To the extent any provision contained in 47 CFR part 51 subparts H and J conflict with any provision of this part, the 47 CFR part 51 provision supersedes the provision of this part.

■ 66. Revise § 69.3 paragraphs (e)(6) and (e)(9) and add paragraph (e)(12) to read as follows:

§ 69.3 Filing of access service tariffs.

* * * * *

(e) * * *

(6) Except as provided in paragraph (e)(12) of this section, a telephone company or companies that elect to file such a tariff shall notify the association not later than March 1 of the year the tariff becomes effective, if such company or companies did not file such a tariff in the preceding biennial period or cross-reference association charges in such preceding period that will be cross-referenced in the new tariff. A telephone company or companies that elect to file such a tariff not in the biennial period shall file its tariff to become effective July 1 for a period of one year. Thereafter, such telephone company or companies must file its tariff pursuant to paragraphs (f)(1) or (f)(2) of this section.

* * * * *

(9) Except as provided in paragraph (e)(12) of this section, a telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff pursuant to paragraph (a) of this section shall notify the association not later than March 1 of the year the tariff becomes effective that it will no longer participate in the association tariff. A telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff for one of its study areas shall file its own Carrier Common Line tariff(s) for all of its study areas.

* * * * *

(12)(i) A local exchange carrier, or a group of affiliated carriers in which at least one carrier is engaging in access stimulation, as that term is defined in § 61.3(bbb) of this chapter, shall file its own access tariffs within forty-five (45) days of commencing access stimulation, as that term is defined in § 61.3(bbb) of this chapter, or within forty-five (45) days of December 29, 2011 if the local exchange carrier on that date is engaged

in access stimulation, as that term is defined in § 61.3(bbb) of this chapter.

(ii) Notwithstanding paragraphs (e)(6) and (e)(9) of this section, a local exchange carrier, or a group of affiliated carriers in which at least one carrier is engaging in access stimulation, as that term is defined in § 61.3(bbb) of this chapter, must withdraw from all interstate access tariffs issued by the association within forty-five (45) days of engaging in access stimulation, as that term is defined in § 61.3(bbb) of this chapter, or within forty-five (45) days of December 29, 2011 if the local exchange carrier on that date is engaged in access stimulation, as that term is defined in § 61.3(bbb) of this chapter.

(iii) Any such carrier(s) shall notify the association when it begins access stimulation, or on December 29, 2011 if it is engaged in access stimulation, as that term is defined in § 61.3(bbb) of this chapter, on that date, of its intent to leave the association tariffs within forty-five (45) days.

[FR Doc. 2011–30378 Filed 11–28–11; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL REGISTER

Vol. 76 Tuesday,
No. 229 November 29, 2011

Part IV

Environmental Protection Agency

40 CFR Part 98
Mandatory Reporting of Greenhouse Gases; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

[EPA–HQ–OAR–2011–0147; FRL–9493–9]

RIN 2060–AQ85

Mandatory Reporting of Greenhouse Gases

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is amending specific provisions in the Mandatory Reporting of Greenhouse Gases Rule to correct certain technical and editorial errors that have been identified since promulgation and to clarify certain provisions that have been the subject of questions from reporters. These final changes include additional information to clarify compliance obligations, correct data reporting elements so they more closely conform to the information used to perform calculations, and make other corrections and amendments. In addition, these final amendments allow a limited, one-time six month extension of the 2012 reporting deadline for facilities and suppliers that contain one or more source categories for which data collection began in 2011.

DATES: *Effective Date*: The final rule amendments are effective on December 29, 2011.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–HQ–OAR–2011–0147. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the EPA's Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue NW., Washington, DC 20004. This Docket Facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Carole Cook, Climate Change Division, Office of Atmospheric Programs (MC–6207J), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; *telephone number:* (202) 343–9263; *fax number:* (202) 343–2342; *email address: GHG ReportingRule@epa.gov.* For technical information and implementation materials, please go to the Greenhouse Gas Reporting Program Web site *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.* To submit a question, select Rule Help Center, followed by Contact Us.

SUPPLEMENTARY INFORMATION:

Regulated Entities. The Administrator determined that this action is subject to the provisions of Clean Air Act (CAA) section 307(d). See CAA section 307(d)(1)(V) (the provisions of section 307(d) apply to ''such other actions as the Administrator may determine''). These are final amendments to existing regulations. These amended regulations affect owners or operators of certain industrial gas suppliers, direct emitters of GHGs, and facilities that geologically sequester or otherwise inject carbon dioxide (CO_2) underground. Regulated categories and examples of affected entities include those listed in Table 1 of this preamble:

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY

Category	NAICS	Examples of affected facilities
Magnesium Production	331419	Primary refiners of nonferrous metals by electrolytic methods.
	331492	Secondary magnesium processing plants.
Petroleum and Natural Gas Systems	486210	Pipeline transportation of natural gas.
	221210	Natural gas distribution facilities.
	211	Extractors of crude petroleum and natural gas.
	211112	Natural gas liquid extraction facilities.
Underground Coal Mines	212113	Underground anthracite coal mining operations.
	212112	Underground bituminous coal mining operations.
Electronics Manufacturing	334111	Microcomputers manufacturing facilities.
	334413	Semiconductor, photovoltaic (solid-state) device manufacturing facilities.
	334419	LCD unit screens manufacturing facilities.
	334419	MEMS manufacturing facilities.
Electrical Transmission and Distribution Equipment Use	221121	Electric bulk power transmission and control facilities.
Electric Equipment Manufacture or Refurbishment	33531	Power transmission and distribution switchgear and specialty transformers manufacturing facilities.
Fluorinated GHG Production	325120	Industrial gases manufacturing facilities.
Importers and Exporters of Pre-charged Equipment and Closed-Cell Foams.	423730	Air-conditioning equipment (except room units) merchant wholesalers.
	333415	Air conditioning equipment (except motor vehicle) manufacturing.
	423620	Air conditioners, room, merchant wholesalers.
	443111	Household appliance stores.
	326150	Polyurethane foam products manufacturing.
	335313	Circuit breakers, power, manufacturing.
	423610	Circuit breakers merchant wholesalers.
Industrial Wastewater Treatment	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.

TABLE 1—EXAMPLES OF AFFECTED ENTITIES BY CATEGORY—Continued

Category	NAICS	Examples of affected facilities
	311421	Fruit and vegetable canning facilities.
	325193	Ethanol manufacturing facilities.
	324110	Petroleum refineries.
Suppliers of Industrial GHGs	325120	Industrial gas production facilities.
CO_2 Enhanced Oil and Gas Recovery Projects	211	Oil and gas extraction projects using CO_2 enhanced oil and gas recovery.
Acid Gas Injection Projects	211111, 211112	Projects that inject acid gas containing CO_2 underground.
Geologic Sequestration of Carbon Dioxide	N/A	CO_2 geologic sequestration projects.
Industrial Waste Landfills	562212	Solid waste landfills.
	322110	Pulp mills.
	322121	Paper mills.
	322122	Newsprint mills.
	322130	Paperboard mills.
	311611	Meat processing facilities.
	311411	Frozen fruit, juice, and vegetable manufacturing facilities.
	311421	Fruit and vegetable canning facilities.
	221320	Sewage treatment facilities.

Table 1 of this preamble is not intended to be exhaustive, but rather lists the types of facilities or suppliers that the EPA is now aware could potentially be affected by the reporting requirements. Other types of facilities and suppliers than those listed in the table could also be subject to reporting requirements. To determine whether you are affected by this action, you should carefully examine the applicability criteria found in 40 CFR part 98, subpart A or the relevant criteria in the sections related to suppliers and direct emitters of GHGs. If you have questions regarding the applicability of this action to a particular facility or supplier, consult the person listed in the preceding **FOR FURTHER GENERAL INFORMATION CONTACT** section.

Judicial Review. Under section 307(b)(1) of the CAA, judicial review of this final rule is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit (the Court) by January 30, 2012. Under CAA section 307(d)(7)(B), only an objection to this final rule that was raised with reasonable specificity during the period for public comment can be raised during judicial review. Section 307(d)(7)(B) of the CAA also provides a mechanism for the EPA to convene a proceeding for reconsideration, ''[i]f the person raising an objection can demonstrate to EPA that it was impracticable to raise such objection within [the period for public comment] or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule.'' Any person seeking to make such a demonstration to us should submit a Petition for Reconsideration to the Office of the Administrator, Environmental Protection Agency, Room 3000, Ariel Rios Building, 1200 Pennsylvania Ave. NW., Washington, DC 20460, with a copy to the person listed in the preceding **FOR FURTHER GENERAL INFORMATION CONTACT** section, and the Associate General Counsel for the Air and Radiation Law Office, Office of General Counsel (Mail Code 2344A), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20004. Note, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by the EPA to enforce these requirements.

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

acf actual cubic feet
AGR acid gas removal
ASTM American Society for Testing and Materials
BAMM best available monitoring methods
CAA Clean Air Act
CBI confidential business information
CEMS continuous emissions monitoring system
CFC chlorofluorocarbon
CFR Code of Federal Regulations
CH_4 methane
CO_2 carbon dioxide
DOC degradable organic carbon
EF emission factor
e-GGRT electronic-GHG Reporting Tool
EPA U.S. Environmental Protection Agency
FR **Federal Register**
GHG greenhouse gas
GHGRP Greenhouse Gas Reporting Program
HCFC hydrochlorofluorocarbon
kg kilograms
kg/ft^3 kilograms per cubic foot
mcf methane correction factor
MMscf million standard cubic feet
MRV monitoring, reporting and verification
MSHA Mine Safety and Health Administration
$MtCO_2e$ metric tons carbon dioxide equivalent
N_2O nitrous oxide
NAICS North American Industry Classification System
NOAA National Oceanic and Atmospheric Administration
NTTAA National Technology Transfer and Advancement Act
OMB Office of Management and Budget
PFCs perfluorocarbons
QA/QC quality assurance/quality control
psia pounds per square inch absolute
RFA Regulatory Flexibility Act
SBREFA Small Business Regulatory Enforcement Fairness Act
SF_6 sulfur hexafluoride
U.S. United States
UMRA Unfunded Mandates Reform Act of 1995

Table of Contents

I. Background

A. How is this preamble organized?

The first section of this preamble contains the basic background information about the origin of these rule amendments. This section also discusses the EPA's use of our legal authority under the Clean Air Act to collect data under the Mandatory Reporting of Greenhouse Gases (GHG reporting) rule.

The second section of this preamble describes in detail the rule changes that are being promulgated to, among other things, correct technical errors, provide clarification, and address implementation issues identified by the EPA and others. This section also presents a summary and the EPA's response to the major public comments submitted on the proposed rule amendments, and significant changes, if any, made since proposal in response to those comments. Responses to additional comments received can be found in the document, ''Response to Comments: 2011 Technical Corrections, Clarifying and Other Amendments to Certain Provisions of the Mandatory Reporting of Greenhouse Gases Rule'' (see EPA–HQ–OAR–2011–0147).

Finally, the last (third) section of the preamble discusses the various statutory and executive order requirements applicable to this rulemaking.

B. Background on This Action

The 2009 final GHG reporting rule (2009 final rule) was signed by EPA Administrator Lisa Jackson on September 22, 2009 and published in the **Federal Register** on October 30, 2009 (74 FR 56260, October 30, 2009). The 2009 final rule, which became effective on December 29, 2009, includes reporting of GHGs from various facilities and suppliers, consistent with the 2008 Consolidated Appropriations Act.[1] Subsequent notices were published in 2010 promulgating the requirements for subparts FF, II, and TT (75 FR 39736, July 12, 2010), subpart DD (75 FR 74774, December 1, 2010) and subpart RR (75 FR 75060, December 1, 2010). Subpart OO, which was promulgated as part of the 2009 final rule was also revised in 2010 (75 FR 79092, December 17, 2010). The source categories in 40 CFR part 98 (Part 98) cover approximately 85–90 percent of U.S. GHG emissions through reporting by direct emitters, as well as suppliers of certain products that would result in GHG emissions when released, used, or oxidized, and those that geologically sequester or otherwise inject carbon dioxide (CO_2) underground.

The EPA published a notice proposing these amendments on August 4, 2011 (76 FR 47392). The public comment period for the proposed rule amendments ended on September 19, 2011. The EPA did not receive any requests to hold a public hearing.

C. Legal Authority

The EPA is finalizing these rule amendments under its existing CAA authority, specifically authorities provided in CAA section 114.

As stated in the preamble to the 2009 final rule (74 FR 56260) and the Response to Comments on the Proposed Rule, Volume 9, Legal Issues, CAA section 114 provides the EPA broad authority to require the information to be gathered by this rule because such data would inform and are relevant to the EPA's carrying out a wide variety of CAA provisions. As discussed in the preamble to the initial proposed rule (74 FR 16448, April 10, 2009), CAA section 114(a)(1) authorizes the Administrator to require emissions sources, persons subject to the CAA, manufacturers of control or process equipment, or persons whom the Administrator believes may have necessary information to monitor and report emissions and provide such other information the Administrator requests for the purposes of carrying out any provision of the CAA. For further information about the EPA's legal authority, see the preambles to the 2009 proposed and final rules and the EPA's Response to Comments Documents.[2]

D. How will these amendments apply to 2012 reports?

We have determined that it is feasible for the sources to implement these technical amendments for the 2011 reporting year because the revisions primarily provide additional clarification regarding the existing regulatory requirements, do not change the type of information that must be collected, and do not materially affect how GHG emissions or quantities are calculated. Our rationale for this determination is explained in the preamble to the proposed rule amendments.[3] In response to general comments submitted on the proposed rulemaking, we have again reviewed the final amendments and determined that they can be implemented, as finalized, for the 2011 reporting year. These amendments do not require any additional monitoring or data collection above what was already included in 40 CFR part 98; therefore, we have determined that reporters can use the same information that they have been collecting under 40 CFR part 98 for each subpart to calculate and report GHG information for 2011 and submit reports in 2012 under the amended subparts.

Although the EPA has determined that these amendments can be effective for the *calculation* of GHG emissions and quantities for the 2011 reporting year, we do note that the EPA is finalizing a limited one-time extension of the 2012 reporting deadline to enable testing of the electronic-GHG Reporting Tool (e-GGRT), which will reflect these amendments. For information on these final amendments and the response to comments on the 2012 deadline, please refer to Section II.A.2 of this preamble.

The EPA did not receive any specific comments expressing concern about the implementation of the amendments for 2011 data collection. One commenter encouraged the EPA to develop guidance documents to clarify the changes in the final rule. In addition to the summary of the requirements and rationale in this preamble, we are also updating subpart-specific outreach materials on our Web site. Technical information and implementation materials can be found on the Greenhouse Gas Reporting Program Web site *http://www.epa.gov/climatechange/emissions/ghgrulemaking.html.*

II. Final Amendments and Responses to Public Comments

We are amending various subparts in 40 CFR part 98 to correct errors in the regulatory language that were identified following promulgation of subparts A and OO on October 30, 2009, subparts FF, II, and TT on July 12, 2010, and subparts DD and RR on December 1, 2010. These errors were identified as a result of working with reporters to implement the various subparts of 40 CFR part 98. We are also amending

[1] Consolidated Appropriations Act, 2008, Public Law 110–161, 121 Stat. 1844, 2128.

[2] 74 FR 16448 (April 10, 2009) and 74 FR 56260 (October 30, 2009). Response to Comments Documents can be found at *http://www.epa.gov/climatechange/emissions/responses.html.*

[3] 76 FR 74392 (August 4, 2011).

certain rule provisions to provide greater clarity. The amendments to 40 CFR part 98 include the following types of changes:

- Changes to correct cross references within and between subparts.
- Additional information to better or more fully understand compliance obligations in a specific provision, such as the reference to a standardized method that must be followed.
- Amendments to certain equations to better reflect actual operating conditions.
- Corrections to terms and definitions in certain equations.
- Corrections to data reporting requirements so that they more closely conform to the information used to perform calculations.
- Other amendments related to certain issues identified as a result of working with the affected sources during rule implementation and outreach.

Additionally, we are promulgating a one-time, six-month extension of the 2012 reporting deadline for facilities and suppliers that contain any source category for which data collection began in 2011. The final amendments promulgated by this action reflect the EPA's consideration of the comments received on the proposal. The major public comments and the EPA's responses for each subpart are provided in this preamble. Our responses to additional significant public comments on the proposal are presented in a comment response document available in Docket ID No. EPA–HQ–OAR–2011–0147.

A. Subpart A—General Provisions

1. Summary of Final Amendments and Major Changes Since Proposal

The EPA is promulgating several technical clarifications and amendments to subpart A to address issues raised by reporters and identified by the EPA during the early years of implementation of the GHG Reporting Program (GHGRP), as well as to clarify terminology to ensure consistency across all subparts.

Threshold for electrical transmission and distribution equipment use. We are amending Table A–3 in the General Provisions to clarify applicability of the rule for Electrical Transmission and Distribution Equipment Use (subpart DD). Specifically, we are revising the Table A–3 entry for subpart DD to reference the capacity threshold language of 40 CFR 98.301 as follows: Electrical transmission and distribution use at facilities where the total nameplate capacity of SF_6 and PFC containing equipment exceeds 17,820 pounds, as determined under 40 CFR 98.301 (subpart DD). This revision clarifies that only those facilities above the capacity threshold requirements of 40 CFR 98.301 must submit an annual report.

Threshold for underground coal mines. We are revising the threshold for underground coal mines subject to subpart FF to include only those that have ventilation emissions of 36,500,000 acf of CH_4 or more per year. For a full description of this change, please refer to the relevant discussion under subpart FF of this action.

Computation of time. The EPA is adding a provision to 40 CFR 98.3(b) to allow information, including but not limited to, the annual GHG report and any subsequent re-submissions, the certificate of representation, and requests to use best available monitoring methods, to be submitted to the EPA on the next business day in the event that a regulatory deadline falls on a weekend or a federal holiday. This revision is consistent with a similar provision under the Acid Rain Program (40 CFR 72.11) and provides all reasonable flexibilities for submitting data in a timely manner without compromising program integrity.

2012 reporting deadline. We are promulgating a one-time, six month extension of the 2012 reporting deadline for facilities and suppliers that contain one or more source categories for which data collection began in 2011 (referred to below as the ''new 2011 reporting year source categories''), in order to allow sufficient time for development, and more importantly stakeholder testing, of the electronic-GHG Reporting Tool (e-GGRT). The deadline extension from March 31, 2012 to September 28, 2012 applies to any facility that contains one or more of the following source categories in Table A–3 or Table A–4: Electronics Manufacturing (subpart I), Fluorinated Gas Production (subpart L), Magnesium Production (subpart T), Petroleum and Natural Gas Systems (subpart W), Use of Electric Transmission and Distribution Equipment (subpart DD), Underground Coal Mines (subpart FF), Industrial Wastewater Treatment (subpart II), Geologic Sequestration of Carbon Dioxide (subpart RR), Manufacture of Electric Transmission and Distribution (subpart SS), Industrial Waste Landfills (subpart TT), and Injection of Carbon Dioxide (subpart UU). In addition, the extension of the reporting deadline from March 31, 2012 to September 28, 2012 applies to the following source category in Table A–5: Imports and Exports of Equipment Pre-charged with Fluorinated GHGs or Containing Fluorinated GHGs in Closed-cell Foams (subpart QQ).

The proposed rule would have required these facilities and suppliers to report twice, with the reporting deadline extended to September 28, 2012 only for reporting of GHG information from the new 2011 reporting year source categories included in Tables A–3, A–4 or A–5 of 40 CFR part 98. All other GHG information (*e.g.,* for General Stationary Combustion (subpart C)) would have still been required to be reported in March 2012. The EPA believed that these two separate submission deadlines would be appropriate because the extension was only necessary to allow time for stakeholder testing of e-GGRT for the new 2011 reporting year source categories. Facilities and suppliers had already successfully demonstrated submission of information through e-GGRT for the source categories required to begin data collection in 2010. Therefore, we believed it was appropriate to limit the extension to the reporting of only the new information for the 2011 reporting year.

Based on the comments received on the proposed rule, this final rule extends the reporting deadline to September 28, 2012 for any facility or supplier that contains a new 2011 reporting year source category, and it applies to the reporting of GHG information from all source categories at their facility. The rationale for this change since proposal is discussed further below in Section II.A.2 of this preamble.

In order for the EPA to identify which facilities and suppliers are subject to this one-time extension of the 2012 reporting deadline, we are requiring that all reporters that submitted an annual GHG report to the EPA for the 2010 reporting year (*i.e.,* submitted their first annual GHG report by September 30, 2011) notify the EPA through e-GGRT by March 31, 2012 that they are not required to submit their second annual GHG report until September 28, 2012. This requirement to notify the EPA by March 31, 2012 does not apply to any facilities or suppliers that are reporting for the first time in 2012.

Reporting on use of Best Available Monitoring Methods (BAMM). We are amending 40 CFR 98.3(c)(7) to remove the phrase ''according to paragraph (d) of this section'', thereby requiring all facilities and suppliers that use BAMM during the reporting year to provide a brief description of each ''best available monitoring method'' used, the parameter measured using the method, and the time period during which the

''best available monitoring method'' was used, if applicable. Through this amendment, we are clarifying that this basic information must be reported for all subparts, including subparts L (Fluorinated Gas Production) and W (Petroleum and Natural Gas Systems). This does not impact the requirements of subpart I (Electronics Manufacturing), which already directly included this reporting requirement in the data reporting requirements of that subpart.

Definitions. The EPA is revising the definition of supplier, as proposed, in 40 CFR 98.6 so it specifically refers to those source categories listed in Table A–5 of subpart A of part 98, and is as described in the definition of the source category in the applicable subparts. We are also revising 40 CFR 98.1(a)(1), as proposed, to remove the terms ''fossil fuel'' and ''industrial greenhouse gas'' from the designation of ''supplier.''

Submission of reports and other information to the EPA. We are amending 40 CFR 98.9 to clarify that the annual GHG report, the certificate of representation, and all other requests, notifications, or communications must be submitted electronically and in a format as specified by the Administrator. Any information that can be submitted through the electronic GHG reporting tool (e-GGRT) must be submitted through that tool. For example, the EPA is in the process of modifying e-GGRT to accept requests for use of BAMM. Once completed, facilities would be required to use that method for submission of BAMM requests. The EPA intends to notify facilities well in advance of these, and any future, deadlines through the Web site (*http://www.epa.gov/climatechange/emissions/ghgrulemaking.html*).

If the format for any request, notification, or communication has not been specified by the EPA, then the information shall be submitted, by mail, to the Director of the Climate Change Division at one of the addresses in 40 CFR 98.9.

Other technical corrections. We are amending 40 CFR 98.2(d) and (e) to remove references to paragraphs 40 CFR 98.2(a)(4)(i) and (a)(4)(ii), respectively. The correct references for both paragraphs should have been to 40 CFR 98.2(a)(4). In those same paragraphs we are clarifying that the applicability determination for importers must be assessed separately from the applicability determination for exporters. In other words, the emissions from the quantity of GHGs imported must be calculated for comparison to the 25,000 metric tons CO_2e threshold and separately the quantity of GHGs exported must be calculated for comparison to the 25,000 metric tons CO_2e.

We are amending 40 CFR 98.2(i)(3) to add a date by which owners and operators must notify the EPA that they no longer need to submit an annual GHG report because their operations have changed such that all applicable GHG-emitting processes and operations cease to operate. Similar to the requirements in 40 CFR 98.2(i)(1) and (i)(2), we are requiring owners or operators to notify the EPA by March 31 of the year following the reporting year in which such conditions have been met.

In 40 CFR 98.3(c)(10) and in the definition of United States parent company(s) in 40 CFR 98.6, we are replacing the term ''reporting entity'' with the term ''facility or supplier'' for consistency across the individual subparts of the rule and to clarify that the obligation is on the owner or operator of any such facility or supplier.

We are revising the introductory paragraph of 40 CFR 98.3(g) to clarify that the 3-year requirement for retention of records starts from the date of submission of the annual GHG report for the reporting year in which the record was generated.

In 40 CFR 98.3(c)(5)(ii), we are replacing the use of the term ''emissions'' with ''quantities'' when referring to the information reported under industrial GHG suppliers. This is consistent with efforts throughout the GHG Reporting Program to clarify that information reported for supplier categories does not necessarily reflect emissions to the atmosphere, but rather ''quantities'' that may be released if all of the supply were combusted, oxidized, or released.

We are correcting an incorrect cross reference in 40 CFR 98.4(m)(4) from (m)(2)(iv)(A) to (m)(2)(v)(A).

Finally, we are clarifying in Table A–5 that coverage and the applicability determination for importers and exporters under subpart MM includes suppliers of natural gas liquids in addition to suppliers of petroleum products.

2. Summary of Comments and Responses

This section contains a brief summary of major comments and responses on the proposed amendments to the General Provisions. Several significant comments were received on this topic. Responses to additional comments received can be found in the document, ''Response to Comments: 2011 Technical Corrections, Clarifying and Other Amendments to Certain Provisions of the Mandatory Reporting of Greenhouse Gases Rule'' (available in Docket ID No. EPA–HQ–OAR–2011–0147).

Comment: Several commenters supported the proposed one-time extension of the reporting date from March 31, 2012 to September 28, 2012 for reporting of data elements under the following source categories: Electronics Manufacturing (subpart I), Fluorinated Gas Production (subpart L), Magnesium Production (subpart T), Petroleum and Natural Gas Systems (subpart W), Use of Electric Transmission and Distribution Equipment (subpart DD), Underground Coal Mines (subpart FF), Industrial Wastewater Treatment (subpart II), Imports and Exports of Equipment Pre-charged with Fluorinated GHGs or Containing Fluorinated GHGs in Closed-cell Foams (subpart QQ), Geologic Sequestration of Carbon Dioxide (subpart RR), Manufacture of Electric Transmission and Distribution (subpart SS), Industrial Waste Landfills (subpart TT), and Injection of Carbon Dioxide (subpart UU). Commenters generally agreed that the extension would provide additional time for the development and testing of the e-GGRT system for the identified subparts. However, multiple commenters expressed concern about the proposed requirement that only the reporting deadline of the above listed subparts was extended and that facilities would still be required to report GHG information from the non-listed subparts (*e.g.,* subpart C—General Stationary Combustion) by March 31, 2012. For example, some commenters stated that a facility could be required to report emissions for subpart C equipment on March 31, 2012, but would need to provide a second report on September 28, 2012 for equipment under subpart W. At least one commenter questioned how data for subparts A and C would be submitted or split between reporting deadlines for facilities reporting under subpart W. Commenters stated that many facilities, including oil exploration and production companies, already compile significant amounts of data, calculations, and information for reporting. Commenters contended that a second reporting deadline would introduce additional complexity and confusion, duplication of effort, and unnecessary burden to the reporting process.

Other commenters expressed concern on the capabilities of e-GGRT to accommodate multiple submissions. Several commenters stated that when changing input methods between XML upload and manual data entry, the current e-GGRT system overwrites any

existing data. At least two commenters expressed concern that the XML upload feature may not be fully tested and available in time for the September deadline. These commenters reiterated that data submitted in September 2012 must not impact the data submitted in March.

In light of these concerns, several commenters requested that, rather than reporting under two deadlines in 2012, affected facilities or suppliers that have to report under any of the listed subparts (subparts I, L, T, W, DD, FF, II, QQ, RR, SS, TT, and UU) be allowed to report GHG information from all applicable subparts by the September 28, 2012 date.

Response: Although the EPA does not agree with all of the arguments raised by the commenters, we are persuaded that having one reporting deadline for facilities and suppliers in 2012 will not only reduce burden for the reporters, but it also will provide the EPA the opportunity for a more robust stakeholder testing process of e-GGRT, which was the primary purpose of the proposed extension in the first place.

Although many commenters were concerned about the ability of e-GGRT to handle multiple submissions, the EPA believes the process for adding these additional subparts to an annual GHG report has been well tested during the 2011 stakeholder testing process and through resubmissions of 2011 annual reports. For example, facilities are able to add GHG information for a particular subpart into e-GGRT and sign, certify, and submit the annual GHG report. Subsequent to the submission, the facility is able to go back into e-GGRT, add GHG information for a new subpart, and then again sign, certify, and resubmit the annual GHG report.

Commenters were also concerned that data could be lost if they were to submit information in webforms in March and then XML in September (or vice versa). While it is true that annual GHG reports must be submitted using either webforms or XML, and not both, this issue is not unique to the extension of the proposed reporting deadline. These were the same procedures as for the 2010 reporting year, and facilities and suppliers were able to successfully complete their submissions in 2011.

Although we are confident that e-GGRT can handle the multiple deadlines, we are persuaded that two reporting deadlines could be inefficient for some facilities, depending on the volume and types of data collected during 2011, and the format in which information used for emissions calculations has been retained. This could be particularly true for the large number of facilities reporting for the first time under subpart W (Petroleum and Natural Gas Systems).

In addition to the potential inefficiencies experienced by the reporters, the EPA recognizes after reviewing the comments that the split deadline could impact the ability to comprehensively test e-GGRT, which was the whole point of proposing the reporting deadline extension for these source categories in the first place. The stakeholder testing process during 2011 was extremely valuable in providing input that enabled the EPA to refine e-GGRT into a user-friendly tool that accurately reflects annual GHG information. It also provided reporters an opportunity to become familiar with the tool, facilitating the reporting process, and improving the quality of data submitted to the EPA. Allowing facilities and suppliers the opportunity to fully test e-GGRT, including the inter-relationship between the new subparts for which data collection began in 2011 (*e.g.,* subparts I and W) and reporting under subpart C, for example, could identify new issues that should be resolved before the reporting deadline.

For these reasons, we agree with the commenters' overall comments and are finalizing an extension of the reporting deadline to September 28, 2012 for any facility or supplier that will also include in their annual GHG report for 2012 a source category for which data collection began in 2011.

In practice, for example, the one-time extension of the 2012 reporting deadline means that a petroleum refinery that has an industrial landfill onsite will not submit their annual GHG report for 2012 until September 28, 2012. A petroleum refinery that does not contain any of these new subparts is still required to report by March 31, 2012. In order to facilitate EPA verification of the data, and to know which facilities were required to report in March and which facilities do not report until September, the EPA is finalizing a requirement that all facilities or suppliers that submitted their first annual GHG report by September 30, 2011, but are not required to submit their second annual GHG report until September 28, 2012, must log in to e-GGRT by March 31, 2012 and submit a notification through e-GGRT that their facility or supplier is not required to report until September for the 2011 reporting year.

Comment: Two commenters requested a delay in the start of data collection for these new subparts from January 1, 2011 to January 1, 2012, thereby extending the reporting deadline by one year to March 31, 2013. The commenters contended that a six-month extension does not provide adequate time for complex facilities or small businesses to comply with the reporting requirements.

Response: The EPA did not propose to extend the applicability of 40 CFR part 98 in the proposed rule, nor does the EPA find such an extension needed, therefore the EPA disagrees with the comment to postpone the beginning of data collection from January 1, 2011 to January 1, 2012, and subsequently extend the reporting deadline by one year to March 31, 2013. Facilities with source categories for which data collection began in 2011 had the opportunity to request use of Best Available Monitoring Methods (BAMM) during part or all of 2011, if they could demonstrate that it would not be reasonably feasible to acquire, install, and operate a required piece of monitoring equipment by January 1, 2011. Requests to use BAMM could be used as a bridge to provide the facility sufficient time to come into full compliance with the rule.

Further, since finalization of the rule requirements for these subparts, the EPA has conducted significant stakeholder outreach to convey rule requirements and address questions from industry about the implementation of those requirements. In addition to the Frequently Asked Questions that are posted on our Web site, the technical corrections, clarifications, and other amendments finalized in this rulemaking are in response to those specific questions. Therefore, we disagree with the commenter and have not extended the reporting deadline to March 31, 2013 for these source categories.

Comment: At least one commenter stated that the proposed changes to 40 CFR 98.9 create confusion for subparts LL and MM. The commenter stated that facilities subject to subparts LL and MM must submit reports using the DCFuels program in place of e-GGRT. Additionally, the DCFuels program allows for mailing of documents. The commenter requested that the use of DCFuels be reflected in 40 CFR 98.9.

Response: The EPA agrees with the commenter that the proposed amendments seemed to apply only to those facilities and suppliers that reported their emissions through e-GGRT. The purpose of these proposed amendments was to be clear that all submissions, notifications and communications must be submitted in a format as specified by the Administrator. It is only where the EPA has not specified a format for a specific submission either required by the EPA or, more likely, initiated by the reporter, that the reporter must submit the

information to the mailing address in 40 CFR 98.9. The EPA clarified the rule accordingly. We decided not to mention the specific reporting tools in the regulatory text itself for the straightforward reason that names could change over time. It was not necessary to include specific names of the reporting tools/options, when the real clarification we were making in the proposal was to clarify what type of information must be sent to the mailing address.

Comment: At least one commenter stated that the proposed clarification to 40 CFR 98.3(g) for retention of records, which states that records must be retained for least 3 years from the date of submission of the annual GHG report, would create multiple record retention periods for companies with multiple reporting facilities where reporting submittals are staggered. The commenter stated that these multiple retention periods could complicate internal reviews and audits. The commenter requested a consistent starting date for all applicable monitoring, recordkeeping, and reporting records.

Response: The amendments to 40 CFR 98.3(g) are intended to reduce multiple retention periods and are consistent with the Acid Rain Program, which reflects the common practice to retain all of the records for a single reporting year in a readily retrievable format, regardless if the record was generated on January 1st or December 31st of that reporting year. Companies with multiple reporting facilities that may stagger submission of annual data prior to the reporting date are encouraged to coordinate with the individual reporting facilities to submit data on the same day if they do not want to track different dates for different facilities. Further, we determined that a single date against which the three-year clock is initiated is not appropriate because some facilities may identify, or be notified by the EPA of, substantive errors in reporting. In the event of a resubmission of an annual GHG report, the three-year recordkeeping retention time would start from the date of the resubmission. This is necessary to ensure that records are maintained for a sufficient period of time so that a history of compliance can be demonstrated and questions about submitted emissions estimates can be resolved, if needed.

B. Subpart W—Petroleum and Natural Gas Systems

At this time, the EPA is not finalizing the proposed technical corrections, clarifying, and other amendments for the petroleum and natural gas sector under 40 CFR part 98, subpart W. On September 9, 2011, the EPA issued proposed revisions to 40 CFR part 98, subpart W (76 FR 56010). The proposed revisions, identified as a result of working with trade associations and reporters in implementing the rule, would provide further clarification on existing requirements, increase flexibility for certain calculation methods, amend data reporting requirements, clarify terms and definitions, and correct technical and editorial errors.

In order to allow for additional analysis and consideration of comments on the September 9, 2011 proposal that might affect the technical corrections to subpart W proposed on August 4, 2011, the EPA has decided not to finalize these amendments at this time. The EPA is considering the comments submitted for the technical corrections, clarifying, and other amendments regarding subpart W proposed on August 4, 2011, and we will address those comments as we address the comments on the revisions to 40 CFR part 98, subpart W proposed on September 9, 2011 (76 FR 56010).

C. Subpart FF—Underground Coal Mines

1. Summary of Final Amendments and Major Changes Since Proposal

We are promulgating several technical clarifications and amendments to subpart FF to address questions raised during the first year of promulgation of the rule, as well as clarifications to specified provisions in the rule.

Final changes to subpart A (related to subpart FF). We revised the threshold for underground coal mines to include only those that have ventilation emissions of 36,500,000 acf of CH_4 or more per year. The previous threshold would have required reporting from all underground coal mines that are subject to quarterly or more frequent sampling by MSHA of ventilation systems, regardless of size. The finalized threshold of ventilation emissions of 36,500,000 acf of CH_4 or more per year (equivalent to an average of 100,000 acf of CH_4 or more per day) is more easily identifiable for the coal industry, is consistent with our original intent in terms of coverage, and removes reporting requirements for approximately 500 mines.

Equations FF–1 and FF–3. We are finalizing the amendments, as proposed, to provide clarification for terms in Equations FF–1 and FF–3. In particular, we are clarifying that the variables ''V,'' ''MCF,'' ''C,'' ''T,'' and ''P'' are not ''daily'' but ''quarterly'' rates. We are also changing the units of ''V'' to cfm instead of scfm and revising the units for ''C'' to read ''%'' to allow for the use of ''C'' on a dry basis.

Sampling for pressure. We have finalized the change allowing facilities to use the annual average barometric pressure from the nearest NOAA weather service station as a default to measuring ventilation system pressure.

Sampling for moisture content. We have specified, as proposed, that moisture content is measured at the location of the flow meter at least weekly if using CEMS, and at the location and time of the grab sample, if using grab samples.

MSHA data. We have clarified the reporting requirements for temperature, pressure, and moisture content measurements when using MSHA data. We have clarified, as proposed, that moisture content need only be determined when the concentration and flow measurements are made on a different basis (one wet and one dry) and that, if needed, the moisture content must be measured. We have also clarified that temperature must be sampled at the same location and within 7 days of the MSHA samples, and that for pressure, facilities must use either a measured value or the average annual barometric pressure from the nearest NOAA weather service station. We have simplified use of the MSHA data in Equation FF–1 by specifying that the MSHA methane flow data is inserted into Equation FF–1 in place of the value for V and the variables MCF, C/100%, and 1440 are removed from the equation. This clarification eliminates the need to measure moisture when using MSHA methane flow data.

Monitoring equipment. We have included, as proposed, the use of infrared and flame ionization analyzers with the provision that they be calibrated annually using measurements made by gas chromatography methods.

Also, as proposed, we have clarified several references for consistency with the types of monitoring equipment required. We replaced references to ''fuel flow meters'' with ''flow meters,'' because the gas that is measured may or may not be used as a fuel. We have also deleted references to ''heating value monitors,'' and ''sour gas flow meters'' because these monitors and meters are not required.

One change was made in response to public comment. We have changed the requirements for temperature measurements when using MSHA data for ventilation systems. See summary of comments and responses in Section II.C.2 of this preamble.

2. Summary of Comments and Responses

This section contains a brief summary of major comments and responses. Two comments were received on this topic. Responses to additional significant comments received can be found in the document, ''Response to Comments: 2011 Technical Corrections, Clarifying and Other Amendments to Certain Provisions of the Mandatory Reporting of Greenhouse Gases Rule'' (see EPA–HQ–OAR–2011–0147).

Comment: One commenter expressed support for the proposed threshold revision. The commenter expressed concern that the EPA's reporting threshold finalized in 2010 (see 75 FR 39736, July 12, 2010) requiring all underground coal mines, regardless of size, that are subject to quarterly or more frequent sampling by the Mining Safety and Health Administration (''MSHA'') of ventilation systems to report GHG emissions would have resulted in a tremendous amount of paperwork and financial burden on these regulated entities. Moreover, the commenter asserted that the threshold would have done little to further the agency's environmental policy objectives.

Response: The EPA agrees with the comment and has finalized the threshold revision, as proposed. For the EPA's rationale for the clarification in the threshold, see the preamble for the proposed rule (76 FR 47400, September 9, 2011).

Comment: Two commenters disagreed with the proposed requirement that facilities collect temperature data at the same time and location as the MSHA samples of volume and concentration of methane. They stated that the EPA should also allow mines to establish temperature data either through readings at a central location in the mine, or potentially through an average annual temperature from the same NOAA weather station. They argued that such a revision would reduce an unnecessary reporting burden.

Response: We agree with the commenters that the temperature reading does not need to take place at the same time as the measurements for volume and concentration of methane. Ventilation air temperatures at a given location do not change very suddenly, and the temperature could be taken at another time. We disagree with the comment that the EPA should allow temperature to be taken at a centralized location at the mine or at a weather station. The temperature of the ventilation air exiting the mine will not be the same as a local weather station temperature. The ventilation air temperature is dominated by ground temperatures, which do not vary hourly like the weather station temperature. Ventilation air temperature will often vary by mine shaft, as some shafts are deeper than others and some drain more area than others. Due to this variability, the final rule requires temperature to be taken at the same location as the MSHA measurements, as proposed. However, the final rule does not require that the temperature readings be taken at the same time as the MSHA samples, but rather allows these temperature readings to be taken within 7 days of the MSHA measurements for volume and concentration of methane.

D. Subpart II—Industrial Wastewater Treatment

1. Summary of Final Amendments and Major Changes Since Proposal

We are promulgating clarifying amendments and technical corrections to subpart II to address questions the EPA has received about the rule's requirements, as well as to clarify terminology.

GHGs to report. We are amending 40 CFR 98.352(d) to replace the term ''landfill gas'' with ''biogas'' to correct an administrative error.

Calculating GHG emissions. We are amending the definitions of the terms for ''T_m'' and ''P_m'' in Equation II–4 to refer to ''average temperature'' and ''average pressure'' to clarify how reporters should use the multiple temperature and pressure measurements that they may make during a measurement period. We are also amending these definitions to clarify how the calculation should be adjusted if the flow rate meter automatically corrects for temperature and pressure.

We are amending 40 CFR 98.353(c)(2)(ii), 98.353(c)(2)(iii)(A) and (B), and 40 CFR 98.354(c) and (d) to replace ''once each calendar week, with at least three days between measurements'' with ''at least once each calendar week; if only one measurement is made each calendar week, there must be at least three days between measurements,'' to clarify what is meant by weekly sampling.

We are amending Equation II–6 of 40 CFR 98.353 to correct an error in the placement of brackets and parentheses. This amendment eliminates the possibility that the equation will return incorrect quantities of methane emissions.

We are amending 40 CFR 98.353(c) to reorder the text to clarify that continuous gas flow monitoring is required for each anaerobic sludge digester, anaerobic reactor, or anaerobic lagoon from which some biogas is recovered; and to clarify that the continuous gas flow measurements must be used to determine cumulative gas production each week. We are also amending 40 CFR 98.353(c)(1) to replace the term ''content'' with the term ''quantity'' to clarify that fully integrated systems report CH_4 quantity which accounts for both CH_4 concentration and biogas flow.

Monitoring and QA/QC requirements. We are amending 40 CFR 98.354(f) by dividing it into subparagraphs and by deleting an incorrect cross reference, to clarify the monitoring requirements for anaerobic sludge digester, anaerobic reactor, or anaerobic lagoon from which some biogas is recovered.

Data reporting requirements. We are amending 40 CFR 98.356(a) by replacing the term ''explain'' with ''indicate'' to provide guidance to reporters about the information they should include in the description or diagram of their wastewater treatment system. We are also replacing the term ''all anaerobic lagoons'' with ''each anaerobic lagoon'' to clarify that reporters should provide the average depth of each lagoon, not the average of all lagoons.

We are amending 40 CFR 98.356 (b)(3) and (4) to clarify that the values for ''B_0'' and ''MCF'' that are used as inputs to Equation II–1 or II–2, are to be taken from Table II–1. We are also amending 40 CFR 98.356(d)(2) by replacing the text ''Cumulative volumetric biogas flow for each week'' with ''Total weekly volumetric biogas flow for each week (up to 52 weeks/year)'' to clarify that reporters should provide the total gas recovered for the week, for up to 52 weeks per year.

We are amending subpart II, Industrial Wastewater Treatment (40 CFR 98.350 through 40 CFR 98.358), in multiple places, replacing the term ''anaerobic digester'' with ''anaerobic sludge digester'' to clarify that the text refers to the anaerobic process defined in 40 CFR 98.350(b)(2); and to replace the term ''gas'' with ''biogas'' to clarify the gas referred to is the biogas defined in 40 CFR 98.358.

2. Summary of Comments and Responses

The EPA did not receive any comments on the proposed amendments to subpart II and is finalizing the amendments to this subpart as proposed.

E. Subpart OO—Suppliers of Industrial Greenhouse Gases

1. Summary of Final Amendments and Major Changes Since Proposal

As proposed, we are amending subpart OO to require that the data currently reported under 40 CFR 98.416(a)(8) and (9) be kept as a record rather than reported. We are making a corresponding revision to 40 CFR 98.416(a)(10).

With these changes, fluorinated GHG and nitrous oxide production facilities will be required to keep dated records of the total mass in metric tons of each reactant fed into the F–GHG or nitrous oxide production process, by process, and the total mass in metric tons of the reactants, by-products, and other wastes permanently removed from the F–GHG or nitrous oxide production process, by process. They will not be required to report these quantities. Under the revised 40 CFR 98.416(a)(10), they will be required to report the mass in metric tons of any fluorinated GHG or nitrous oxide fed into the transformation process, by process.

2. Summary of Comments and Responses

Comment: The EPA received three comments from two commenters on the proposed changes to the subpart OO reporting and recordkeeping requirements. Both commenters agreed with the changes, and one commenter agreed with the EPA's rationale. The other commenter stated that the change would make the data available to EPA inspectors if needed, but would protect the data from public disclosure that would compromise reporters' global competitiveness. This commenter requested that the EPA issue a direct final rule to make the changes effective before the September 30, 2011 reporting deadline for 2010 data.

Response: We did not issue a direct final rule to make these changes effective before the September 30, 2011 reporting deadline for 2010 data because we concluded that a direct final action was not appropriate in this case. The data submitted for 2010 under 40 CFR 98.416(a)(8) and (9) has been classified as confidential business information (76 FR 30782, May 26, 2011) and will be afforded protection as CBI. As discussed in the proposed rule, the proposed changes were based on our conclusion that the data elements in 40 CFR 98.416(a)(8) and (9), by themselves, have somewhat limited usefulness for verifying production levels.

F. Subpart RR—Geologic Sequestration of Carbon Dioxide

1. Summary of Final Amendments and Major Changes Since Proposal

We are promulgating clarifying amendments and technical corrections to subpart RR to correct known errors.

Accounting for CO_2 entrained in produced water. We are amending 40 CFR 98.443(d) to ensure that CO_2 entrained in produced water that is not processed through a gas-liquid separator is accounted for in the mass balance equation. Specifically, we are adding a new sentence to 40 CFR 98.443(d) to account for any CO_2 in fluids that are produced and not processed through a separator. We are also adding a new sentence to 40 CFR 98.443(d)(3) to clarify that the reporter must include additional information regarding the measurement methods used to determine the concentration of CO_2 in fluids, and a discussion of how the amount of produced CO_2 would be determined, in the monitoring, reporting, and verification (MRV) plan. In the MRV plan, the reporter should describe the disposition of the produced water (reinjected into another zone, reused, or otherwise disposed) and provide justification for determining whether the CO_2 entrained in the water is sequestered. The MRV plan should also describe considerations the reporter intends to use to calculate CO_2 from produced water for the mass balance equation.

CO_2 Emissions from Equipment Leaks and Vented Emissions of CO_2. We are amending the term ''CO_2 equipment leakage and vented CO_2 emissions'' throughout subpart RR so that it reads ''CO_2 emissions from equipment leaks and vented emissions of CO_2.'' This change is to ensure consistency with the terminology that is used in 40 CFR part 98, subpart W and to more accurately describe the equipment between flow meters and wellheads for which monitoring requirements are specified in subpart RR. Specifically, we are amending the following text:

- At 40 CFR 98.442(e) and 98.442(f), revising the term ''Mass of CO_2 equipment leakage and vented CO_2 emissions'' to read ''Mass of CO_2 emissions from equipment leaks and vented emissions of CO_2.''
- In Equations RR–11 and RR–12 at 40 CFR 98.443, revising the term ''Total annual CO_2 mass emitted (metric tons) as equipment leakage or vented emissions'' to read ''Total annual CO_2 mass emitted (metric tons) from equipment leaks and vented emissions of CO_2.''
- At 40 CFR 98.444(d), revising the heading ''CO_2 equipment leakage and vented CO_2 emissions'' to read ''CO_2 emissions from equipment leaks and vented emissions of CO_2.''
- At 40 CFR 98.445(e), revising the term ''CO_2 equipment leakage or vented CO_2 emissions to read ''CO_2 emissions from equipment leaks and vented emissions of CO_2.''
- At the introductory text of 40 CFR 98.446(f)(3), revising the term ''CO_2 equipment leakage and vented CO_2 emissions'' to read ''CO_2 emissions from equipment leaks and vented emissions of CO_2.''
- At 40 CFR 98.446(f)(3)(i) and 98.446(f)(3)(ii), revising the term ''mass of CO_2 emitted (in metric tons) annually as equipment leakage or vented emissions'' to read ''mass of CO_2 emitted (in metric tons) annually from equipment leaks and vented emissions of CO_2.''
- At 40 CFR 98.447(a)(5) and 98.447(a)(6), revising the term ''CO_2 emitted as equipment leakage or vented emissions'' to read ''CO_2 emitted from equipment leaks and vented emissions of CO_2.''
- At 40 CFR 98.448(a)(5), revising the term ''considerations for calculating equipment leakage and vented emissions'' to read ''considerations for calculating CO_2 emissions from equipment leaks and vented emissions of CO_2.''

Other technical corrections. We are amending an incorrect cross reference in the introductory language of 40 CFR 98.446(a)(2) and 40 CFR 98.446(a)(3). We are also amending an incorrect cross reference at 40 CFR 98.446(f)(1)(vii). We are also amending the heading of 40 CFR 98.448(e) to correct an administrative error.

We are amending the data reporting element at 40 CFR 98.446(e) and the introductory text at 40 CFR 98.446(f) to provide clarity on when reporters report total amount sequestered. The amended data reporting element at 40 98.446(e) reads as follows: ''Report the date that you began collecting data for calculating total amount sequestered according to 40 CFR 98.448(a)(7) of this subpart''. The amended introductory text at 40 CFR 98.446(f) reads as follows: ''Report the following. If the date specified in paragraph (e) of this section is during the reporting year for this annual report, report the following starting on the date specified in paragraph (e) of this section.'' We are amending the definition of ''CO_2 received'' at 40 CFR 98.449 to correct a typographical error by adding the word ''means'' after the CO_2 received defined term. The amended definition reads as follows:

''CO_2 received means the CO_2 stream that you receive to be injected for the first time into a well on your facility that is covered by this subpart. CO_2 received includes, but is not limited to, a CO_2 stream from a production process unit inside your facility and a CO_2 stream that was injected into a well on another facility, removed from a discontinued enhanced oil or natural gas or other production well, and transferred to your facility.''

2. Summary of Comments and Responses

The EPA did not receive any comments on the proposed amendments to subpart RR and is finalizing the amendments to this subpart as proposed.

G. Subpart TT—Industrial Waste Landfills

1. Summary of Final Amendments and Major Changes Since Proposal

We are promulgating clarifying amendments and technical corrections to subpart TT to address questions the EPA has received about the rule's requirements and to correct known errors.

Determining waste-specific DOC values for closed Landfills. As proposed, we are finalizing amendments to 40 CFR 98.464 by adding a new paragraph (c) to provide methodologies for closed landfills or active landfills that have stopped accepting certain types of wastes to determine the volatile solids concentration (for exemption purposes under 40 CFR 98.460(c)(2)(xii)) or to determine the waste-specific DOC values for historically disposed waste streams. These new methods allow landfills to identify waste streams similar to those that had been historically placed in the landfill, measure the volatile solids concentration of these ''similar'' waste streams, and use those measured values to assess the applicability of the exemption under paragraph 98.460(c)(2)(xii)) or to determine the average DOC value for the historical waste streams. The proposed provisions also allow use of process knowledge to determine the volatile solids concentration and, if needed, to calculate the corresponding DOC value if a similar waste stream cannot be identified.

Equations for determining volatile solids and DOC values. As proposed, we are deleting Equation TT–7 and amending Equation TT–8 to 40 CFR 98.464 to correct inadvertent errors in these equations and we are revising the variable ''F'' in Equation TT–1 and providing a new Equation TT–9 in a new paragraph (g) in 40 CFR 98.464 to correct the measured CH_4 concentration for zero percent oxygen.

Provisions for actively aerated landfills and other amendments to conform with amendments to subpart HH. As proposed, we are amending the definition of the methane correction factor (MCF) to allow landfills with active aeration units to use an MCF value other than the default value of 1 and we are adding 40 CFR 98.466(d)(4) to require reporting of the MCF value and the basis for using an MCF value other than the default value of 1.

As proposed, we are finalizing amendments to define the term ''construction and demolition waste landfills'' as defined in subpart HH and to use that term rather than ''dedicated construction and demolition waste landfills.''

We are also finalizing amendments to revise the footnote to Table TT–1 to subpart TT of part 98 to clarify that leachate recirculation rates can be determined from company records or engineering estimates and that the owner or operator of a landfill that uses leachate recirculation may elect to use the k value for the wet climate rather than calculating the leachate recirculation rate.

Other technical corrections. We are finalizing a number of other technical corrections for subpart TT, as proposed, to correct typographical errors, to correct equations, and to provide minor clarifications. These corrections are summarized below:

- In 40 CFR 98.460(c)(2)(i), replacing ''Coal combustion residue (*e.g.*, fly ash)'' with ''Coal combustion or incinerator ash (*e.g.*, fly ash).''
- In 40 CFR 98.463(a)(1):

—Revising the definition of G_{CH4} to delete the word ''rate.''

—Revising the definition of DOC_x from ''degradable organic carbon for year X * * *'' to be ''degradable organic carbon for waste disposed in year X * * *''

- In 40 CFR 98.463(a)(2):

—Revising ''January 1, 1980'' to be ''January 1, 1960'' in both places.

—Replacing the term ''first emissions monitoring year'' with ''first emissions reporting year.''

- In 40 CFR 98.463(a)(2)(ii)(C), deleting the phrase ''fixed average annual bulk waste disposal quantity for each year for which historic disposal quantity and'' in the paragraph text and adding to the definition of W_x ''This annual bulk waste disposal quantity applies for all years from ''YrOpen'' to ''YrData'' inclusive.''
- Revising the definition of LFC to allow closed landfills that have some measurement data to appropriately calculate W_x only for years for which the closed landfill does not have waste disposal data available from company records or from Equation TT–3.
- Revising the definition of YrData in Equation TT–4a to allow closed landfills that have some measurement data to appropriately calculate W_x.
- Adding Equation TT–4b for use in calculating W_x when historical waste quantity data are sporadic.
- In 40 CFR 98.464(b), replacing ''For each waste stream for which you choose to determine * * *'' with ''For each waste stream placed in the landfill during the reporting year for which you choose to determine * * *''
- In 40 CFR 98.464(b)(1), replacing ''Develop and follow a sampling plan to collect a representative sample of each waste stream for which testing is elected'' with ''Develop and follow a sampling plan to collect a representative sample (in terms of composition and moisture content) of each waste stream placed in the landfill for which testing is elected.''
- In 40 CFR 98.464(b)(4), adding the option to use an alternative test procedure published by a consensus-based standards organization to determine an appropriate DOC value using a 60-day anaerobic biodegradation test. We also made conforming edits for reporting and recordkeeping requirements.
- In 40 CFR 98.466(b), replacing ''Report the following waste characterization information:'' with ''Report the following waste characterization and modeling information:''.
- Moving paragraphs 40 CFR 98.466(d)(3) and (4) to 98.466(b)(3) and (4).
- In 40 CFR 98.466(b)(2), adding ''* * * for which Equation TT–1 of this subpart is used to calculate modeled CH_4 generation.''
- In 40 CFR 98.466(c)(3)(ii), replacing ''The year, the waste disposal quantity and production quantity for each year Equation TT–2 applies'' with ''The year, the waste disposal quantity and production quantity for each year used in Equation TT–2 of this subpart to calculate the average waste disposal factor (WDF).''
- In 40 CFR 98.466(d), adding the phase ''and each year thereafter up'' so that the paragraph reads ''For each year of landfilling starting with the ''Start Year'' (S) and each year thereafter up to the current reporting year, report the following information:''.

• Adding a new paragraph 40 CFR 98.466(d)(1) to read ''The calendar year for which following data elements apply'' and renumbering existing paragraphs 98.466(d)(1) and (2) to (d)(2) and (3) and adding the phrase ''for the specified year'' to ensure the data elements are reported with specified year in the new paragraph 98.466(d)(1).

• In 40 CFR 98.468, adding a definition of ''design capacity'' to further clarify what is meant by this term as it is used in 40 CFR 98.460.

• In 40 CFR 98.466(f), deleting the word ''rate'' to conform with revised definition of term and replace it with ''(G_{CH4})''.

• In 40 CFR 98.466(f), adding ''(MG)'' after ''methane generation'' and replacing ''Equation TT–5'' with ''Equation TT–6''.

• In Table TT–1, amending the default value of construction and demolition waste from 0.04 to 0.08.

• In Table TT–1, revising the description of the waste type ''Inert Waste'' to read ''Inert Waste [*i.e.*, wastes listed in 40 CFR 98.460(c)(2)]''.

Major changes since proposal. Major changes since proposal are identified in the following list. The rationale for these and any other significant changes can be found in this preamble or the document, ''Response to Comments: 2011 Technical Corrections, Clarifying and Other Amendments to Certain Provisions of the Mandatory Reporting of Greenhouse Gases Rule'' (see EPA–HQ–OAR–2011–0147).

• Revising the definition YrData to allow closed landfills that have some measurement data to appropriately calculate W_x.

• Adding Equation TT–4b for use in calculating W_x when historical waste quantity data are sporadic.

• In 40 CFR 98.464(b)(4), adding the option to use an alternative test procedure published by a consensus-based standards organization to determine an appropriate DOC value using a 60-day anaerobic biodegradation test. We also made conforming edits to the reporting and recordkeeping requirements.

• In 40 CFR 98.468, adding a definition (revised from the proposed definition) of ''design capacity'' to further clarify what is meant by this term as it is used in 40 CFR 98.460.

2. Summary of Comments and Responses

This section contains a brief summary of major comments and responses. Several comments were received on subpart TT. Responses to additional significant comments received can be found in the document, ''Response to Comments: 2011 Technical Corrections, Clarifying and Other Amendments to Certain Provisions of the Mandatory Reporting of Greenhouse Gases Rule'' (see EPA–HQ–OAR–2011–0147).

Comment: We received several comments that the parenthetical phrase ''as received at the landfill'' to 40 CFR 98.464(b)(1) does more than clarify that closed landfills are not to be sampled, it also appears to prevent foundries from testing individual waste streams that are commingled prior to receipt at the landfill.

Response: It was not our intent to prevent the testing of individual waste streams. In fact, the definition of waste stream clearly indicates that, for facilities with an on-site landfill, a waste stream is ''the industrial solid waste material generated by a specific processing unit at the landfill.'' We agree that the term ''as received'' can be misinterpreted. Therefore, we are using the term ''placed in the landfill'' rather than ''as received at the landfill'' and adding ''(in terms of composition and moisture content)'' after ''representative sample'' to clarify that the sampling must be done for the waste stream as it is initially disposed of, which excludes sampling of waste in-place at a closed landfill. Together with the definition of waste stream in 40 CFR 98.468, these amendments clearly apply to the sampling and evaluation of individual waste streams.

Comment: One commenter noted that the revised definition of the term YrData in Equation TT–4 does not adequately allow the calculation of waste quantities when measurement data are available for some historical years but when there are data gaps before and after these years.

Response: When we developed Equation TT–4, we envisioned that facilities would generally have data for the most recent historical years and would only be estimating waste quantities for the years prior to when data were available. Equation TT–4 is not well suited to address the situation where waste quantity data are available from company records or Equation TT–3 for sporadic, non-consecutive years. To address this issue, we have re-named Equation TT–4 to be Equation TT–4a, and limited the use of Equation TT–4a to those instances where data are available consecutively for the most recent disposal years. When data are available for sporadic years, we have added a separate equation (Equation TT–4b) that can be used to estimate the missing annual waste quantities.

Comment: One commenter stated that the proposed revisions to the equations and terms related to determining volatile solids concentration and waste stream-specific DOC values can still yield incorrect DOC values because some substances, such as plastics or activated carbon, would have high volatile solids concentration but should not have significant degradable organic carbon content. The commenter suggested that alternative anaerobic biodegradation tests available from consensus-based standards organizations be allowed as an alternative to the volatile solids-based estimation method, noting these types of tests were used as the basis of F_{DOC} value used in Equation TT–8. The commenter presented results of a 90-day anaerobic biodegradation test to support their claim that coke contained in an inorganic waste sample would not anaerobically degrade. Alternatively, the commenter recommended specifically listing titanium oxide waste in 40 CFR 98.460(c)(2).

Response: We reviewed available methods for evaluating the anaerobic biodegradability of waste materials. While we expect that these methods are likely to be more accurate in situations like those identified by the commenter, a short-duration test may not fully determine the amount of carbon that could be degraded over decades within a landfill. Based on our review of various anaerobic biodegradation rate tests, we have provided for the use of anaerobic biodegradation tests following methods developed by consensus-based standards organizations. We have specified certain test requirements (minimum of 60 days; four test samples) and quality assurance objectives for determining DOC values based on these anaerobic biodegradation tests.

Comment: We received several comments regarding the proposed definition of ''design capacity''. Some commenters suggested that, based on the definition, unpermitted landfills or landfills that do not have a permitted capacity limit do not have a ''design capacity'' and are therefore not covered by the rule. The commenters requested clarification on this issue. Another commenter questioned the need to determine a site-specific waste density and recalculate the design capacity annually.

Response: First, we did not intend to limit the applicability of the rule to only those landfills that have a permitted capacity limit; we merely intended to allow facilities that have permitted capacities to use their permitted capacity rather than the maximum volume of waste that could be disposed of in the area of the landfill. We have revised the definition of design capacity so that the first sentence simply reads

''*Design capacity* means the maximum amount of solid waste a landfill can accept.'' The second paragraph retains the clarification that the design capacity can be determined in terms of volume or mass in the most recent permit. For landfills without a permitted capacity limit, the design capacity should be determined based on the physical limitations, in terms of the total area available for waste disposal and potential waste depth of the landfill.

With respect to the need to re-evaluate the site-specific waste density annually, we agree with the commenter that this measurement is required under very limited circumstances, namely to determine applicability. For most landfills, the design capacity will be significantly smaller or larger than the 300,000 metric tons threshold value provided in 40 CFR 98.460(a). Therefore, only those landfill facilities that have design capacities near 300,000 metric tons would need to re-evaluate their design capacities. We also agree that the design capacity need only be re-evaluated if there is a change in the process that can reasonably be expected to alter the site-specific waste density. Therefore, we have limited the requirement to re-determine site-specific waste density and resultant design capacity to those cases where the current design capacity is within 10 percent of the 300,000 metric tons threshold value in 40 CFR 98.460(a) and there is a process change that can reasonably be expected to change the site-specific waste density.

III. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

This action does not impose any new information collection burden. The amendments are administrative in nature and do not increase the recordkeeping and reporting burden associated with Part 98. However, the Office of Management and Budget (OMB) has previously approved the information collection request (ICR) for subparts A and OO contained in the regulations promulgated on October 30, 2009 (EPA ICR number 2300.03; OMB control number 2060–0629), subpart DD promulgated on December 1, 2010 (EPA ICR number 2373.02; OMB control number 2060–0650), subparts FF, II and TT promulgated on July 12, 2010 (EPA ICR number 2396.01; OMB control number 2060–0647), and subpart RR promulgated on December 1, 2010 (EPA ICR number 2372.02; OMB control number 2060–0649) under 40 CFR part 98 under the provisions of the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The OMB control numbers for the EPA's regulations in 40 CFR are listed in 40 CFR part 9. EPA has submitted change worksheets for the respective ICRs to OMB to reflect the clarifications to the reporting requirements finalized in this rule. Further information on the EPA's assessment on the impact on burden can be found in the Technical Corrections and Amendments Cost Memo in docket number EPA–HQ–OAR–2011–0147.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this final rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. This definition of small entity is consistent with the definition of small entity used for Part 98.

After considering the economic impacts of these final rule amendments on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. These rule amendments will not impose any new requirement on small entities that are not currently required by the regulation of subparts A and OO promulgated on October 30, 2009; subparts FF, II, and TT promulgated on July 12, 2010; or subparts DD or RR, both promulgated on December 1, 2010. The amendments to 40 CFR part 98 are administrative in nature and do not increase the costs for small entities to comply with Part 98. Therefore, this final rule does not have a significant economic impact on a substantial number of small entities.

The EPA took several steps to reduce the impact of 40 CFR part 98 on small entities when developing the final GHG reporting rules in 2009 and 2010. For example, the EPA determined appropriate thresholds that reduced the number of small businesses reporting. In addition, the EPA conducted several meetings with industry associations to discuss regulatory options and the corresponding burden on industry, such as recordkeeping and reporting. Finally, the EPA continues to conduct significant outreach on the GHG reporting program and maintains an ''open door'' policy for stakeholders to help inform the EPA's understanding of key issues for the industries.

D. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538, requires federal agencies, unless otherwise prohibited by law, to assess the effects of their regulatory actions on state, local, and Tribal governments and the private sector. Federal agencies must also develop a plan to provide notice to small governments that might be significantly or uniquely affected by any regulatory requirements. The plan must enable officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates and must inform, educate, and advise small governments on compliance with the regulatory requirements.

The final rule amendments do not contain a federal mandate that may result in expenditures of $100 million or more for state, local, and Tribal governments, in the aggregate, or the private sector in any one year. Thus, the final rule amendments are not subject to the requirements of section 202 and 205 of the UMRA. This rule is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. These amendments will not impose any new requirements that are not currently required for 40 CFR part 98, and the rule amendments would not unfairly apply to small governments. Therefore, this action is not subject to the requirements of section 203 of the UMRA.

E. Executive Order 13132: Federalism

The final rule amendments to Part 98 do not have federalism implications. They will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

These amendments apply directly to facilities that directly emit greenhouses gases, facilities that supply certain products that would result in GHGs when released, combusted or oxidized, and facilities that geologically sequester or otherwise inject CO_2 underground. They do not apply to governmental entities unless the government entity owns a facility that directly emits GHGs above threshold levels (such as a landfill), so relatively few government facilities would be affected. This regulation also does not limit the power of states or localities to collect GHG data and/or regulate GHG emissions. Thus, Executive Order 13132 does not apply to this action.

Although section 6 of Executive Order 13132 does not apply to this action, the EPA did consult with state and local officials or representatives of state and local governments in developing subparts A and OO promulgated on October 30, 2009; subparts FF, II, and TT promulgated on July 12, 2010; and subparts DD and RR, both promulgated on December 1, 2010. A summary of the EPA's consultations with state and local governments is provided in Section VIII.E of the preamble to the 2009 final rule.

In the spirit of Executive Order 13132, and consistent with the EPA policy to promote communications between the EPA and state and local governments, the EPA specifically solicited comments on the proposed action from state and local officials. The EPA did not receive any comments on the proposed action from state and local officials.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have Tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). The final rule amendments do not result in any changes to the current requirements of 40 CFR part 98. Thus, Executive Order 13175 does not apply to this action.

Although Executive Order 13175 does not apply to this action, the EPA sought opportunities to provide information to Tribal governments and representatives during the development of the rules for subparts A and OO promulgated on October 30, 2009; subparts FF, II, and TT promulgated on July 12, 2010, and subparts and DD and RR, both promulgated on December 1, 2010. A summary of the EPA's consultations with Tribal officials is provided in Sections VIII.D and VIII.F of the preamble to the 2009 final rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs the EPA to provide Congress, through OMB, explanations when the agency decides not to use available and applicable voluntary consensus standards.

The final rule amendments do not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The EPA has determined that these final rule amendments will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment because it is a rule addressing information collection and reporting procedures.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the U.S. prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective on December 29, 2011.

List of Subjects in 40 CFR Part 98

Environmental protection, Administrative practice and procedure, Greenhouse gases, Suppliers, Reporting and recordkeeping requirements.

Dated: November 9, 2011.

Lisa P. Jackson,

Administrator.

For the reasons stated in the preamble, part 98 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 98—[AMENDED]

■ 1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

■ 2. Section 98.1 is amended by revising paragraph (a) to read as follows:

Subpart A—[Amended]

§ 98.1 Purpose and scope.

(a) This part establishes mandatory greenhouse gas (GHG) reporting requirements for owners and operators of certain facilities that directly emit GHG as well as for certain suppliers. For suppliers, the GHGs reported are the quantity that would be emitted from combustion or use of the products supplied.

* * * * *

■ 3. Section 98.2 is amended by:
■ a. Revising paragraph (d).
■ b. Revising paragraph (e).
■ c. Revising paragraph (f) introductory text.
■ d. Revising paragraph (h).
■ e. Revising paragraph (i)(3).

§ 98.2 Who must report?

* * * * *

(d) To calculate GHG quantities for comparison to the 25,000 metric ton CO_2 per year threshold for importers and exporters of coal-to-liquid products under paragraph (a)(4) of this section, calculate the mass in metric tons per year of CO_2 that would result from the complete combustion or oxidation of the quantity of coal-to-liquid products that are imported during the reporting year and, that are exported during the reporting year. Compare the imported quantities and the exported quantities separately to the 25,000 metric ton CO_2 per year threshold. Calculate the quantities using the methodology specified in subpart LL of this part.

(e) To calculate GHG quantities for comparison to the 25,000 metric ton CO_2e per year threshold for importers and exporters of petroleum products under paragraph (a)(4) of this section, calculate the mass in metric tons per year of CO_2 that would result from the complete combustion or oxidation of the combined volume of petroleum products and natural gas liquids that are imported during the reporting year and that are exported during the reporting year. Compare the imported quantities and the exported quantities separately to the 25,000 metric ton CO_2 per year threshold. Calculate the quantities using the methodology specified in subpart MM of this part.

(f) To calculate GHG quantities for comparison to the 25,000 metric ton CO_2e per year threshold under paragraph (a)(4) of this section for importers and exporters of industrial greenhouse gases and for importers and exporters of CO_2, the owner or operator shall calculate the mass in metric tons per year of CO_2e imports and exports as described in paragraphs (f)(1) through (f)(3) of this section. Compare the imported quantities and the exported quantities separately to the 25,000 metric ton CO_2 per year threshold.

* * * * *

(h) An owner or operator of a facility or supplier that does not meet the applicability requirements of paragraph (a) of this section is not subject to this rule. Such owner or operator would become subject to the rule and reporting requirements, if a facility or supplier exceeds the applicability requirements of paragraph (a) of this section at a later time pursuant to § 98.3(b)(3). Thus, the owner or operator should reevaluate the applicability to this part (including the revising of any relevant emissions calculations or other calculations) whenever there is any change that could cause a facility or supplier to meet the applicability requirements of paragraph (a) of this section. Such changes include but are not limited to process modifications, increases in operating hours, increases in production, changes in fuel or raw material use, addition of equipment, and facility expansion.

(i) * * *

(3) If the operations of a facility or supplier are changed such that all applicable GHG-emitting processes and operations listed in paragraphs (a)(1) through (a)(4) of this section cease to operate, then the owner or operator is exempt from reporting in the years following the year in which cessation of such operations occurs, provided that the owner or operator submits a notification to the Administrator that announces the cessation of reporting and certifies to the closure of all GHG-emitting processes and operations no later than March 31 of the year following such changes. This paragraph (i)(3) does not apply to seasonal or other temporary cessation of operations. This paragraph (i)(3) does not apply to facilities with municipal solid waste landfills or industrial waste landfills, or to underground coal mines. The owner or operator must resume reporting for any future calendar year during which any of the GHG-emitting processes or operations resume operation.

* * * * *

■ 4. Section 98.3 is amended by:
■ a. Revising paragraph (b) introductory text.
■ b. Adding paragraph (b)(1).
■ c. Adding paragraph (b)(4).
■ d. Revising paragraph (c)(5)(ii).
■ e. Revising paragraph (c)(7).
■ f. Revising paragraph (c)(10).
■ g. Revising paragraph (c)(11).
■ h. Revising the second sentence of paragraph (g) introductory text.

§ 98.3 What are the general monitoring, reporting, recordkeeping and verification requirements of this part?

* * * * *

(b) *Schedule.* The annual GHG report for reporting year 2010 must be submitted no later than September 30, 2011. The annual report for reporting years 2011 and beyond must be submitted no later than March 31 of each calendar year for GHG emissions in the previous calendar year, except as provided in paragraph (b)(1) of this section.

(1) For reporting year 2011, facilities with one or more of the subparts listed in paragraphs (b)(1)(i) through (b)(1)(xi) of this section and suppliers listed in paragraph (b)(1)(xii) of this section are required to submit their annual GHG report no later than September 28, 2012. Facilities and suppliers that are submitting their second annual GHG report in 2012 and that are reporting on one or more subparts listed in paragraphs (b)(1)(i) through (b)(1)(xii) of this section must notify EPA by March 31, 2012 that they are not required to submit their annual GHG report until September 28, 2012.

(i) Electronics Manufacturing (subpart I).

(ii) Fluorinated Gas Production (subpart L).

(iii) Magnesium Production (subpart T).

(iv) Petroleum and Natural Gas Systems (subpart W).

(v) Use of Electric Transmission and Distribution Equipment (subpart DD).

(vi) Underground Coal Mines (subpart FF).

(vii) Industrial Wastewater Treatment (subpart II).

(viii) Geologic Sequestration of Carbon Dioxide (subpart RR).

(ix) Manufacture of Electric Transmission and Distribution (subpart SS).

(x) Industrial Waste Landfills (subpart TT).

(xi) Injection of Carbon Dioxide (subpart UU).

(xii) Imports and Exports of Equipment Pre-charged with Fluorinated GHGs or Containing Fluorinated GHGs in Closed-cell Foams (subpart QQ).

* * * * *

(4) Unless otherwise stated, if the final day of any time period falls on a weekend or a federal holiday, the time period shall be extended to the next business day.

(c) * * *

(5) * * *

(ii) Quantity of each GHG from each applicable supply category in Table A–5 to this subpart, expressed in metric

tons of each GHG. For fluorinated GHG, report quantities of all fluorinated GHG, including those not listed in Table A–1 to this subpart.

* * * * *

(7) A brief description of each ''best available monitoring method'' used, the parameter measured using the method, and the time period during which the ''best available monitoring method'' was used, if applicable.

* * * * *

(10) NAICS code(s) that apply to the facility or supplier.

(i) *Primary NAICS code.* Report the NAICS code that most accurately describes the facility or supplier's primary product/activity/service. The primary product/activity/service is the principal source of revenue for the facility or supplier. A facility or supplier that has two distinct products/activities/services providing comparable revenue may report a second primary NAICS code.

(ii) *Additional NAICS code(s).* Report all additional NAICS codes that describe all product(s)/activity(s)/service(s) at the facility or supplier that are not related to the principal source of revenue.

(11) Legal name(s) and physical address(es) of the highest-level United States parent company(s) of the owners (or operators) of the facility or supplier and the percentage of ownership interest for each listed parent company as of December 31 of the year for which data are being reported according to the following instructions:

(i) If the facility or supplier is entirely owned by a single United States company that is not owned by another company, provide that company's legal name and physical address as the United States parent company and report 100 percent ownership.

(ii) If the facility or supplier is entirely owned by a single United States company that is, itself, owned by another company (*e.g.*, it is a division or subsidiary of a higher-level company), provide the legal name and physical address of the highest-level company in the ownership hierarchy as the United States parent company and report 100 percent ownership.

(iii) If the facility or supplier is owned by more than one United States company (*e.g.*, company A owns 40 percent, company B owns 35 percent, and company C owns 25 percent), provide the legal names and physical addresses of all the highest-level companies with an ownership interest as the United States parent companies, and report the percent ownership of each company.

(iv) If the facility or supplier is owned by a joint venture or a cooperative, the joint venture or cooperative is its own United States parent company. Provide the legal name and physical address of the joint venture or cooperative as the United States parent company, and report 100 percent ownership by the joint venture or cooperative.

(v) If the facility or supplier is entirely owned by a foreign company, provide the legal name and physical address of the foreign company's highest-level company based in the United States as the United States parent company, and report 100 percent ownership.

(vi) If the facility or supplier is partially owned by a foreign company and partially owned by one or more U.S. companies, provide the legal name and physical address of the foreign company's highest-level company based in the United States, along with the legal names and physical addresses of the other U.S. parent companies, and report the percent ownership of each of these companies.

(vii) If the facility or supplier is a federally owned facility, report ''U.S. Government'' and do not report physical address or percent ownership.

* * * * *

(g) *Recordkeeping.* * * * Retain all required records for at least 3 years from the date of submission of the annual GHG report for the reporting year in which the record was generated. * * *

* * * * *

■ 5. Section 98.4 is amended by revising paragraph (m)(4) to read as follows:

§ 98.4 Authorization and responsibilities of the designated representative.

* * * * *

(m) * * *

(4) Any electronic submission covered by the certification in paragraph (m)(2)(v)(A) of this section and made in accordance with a notice of delegation effective under paragraph (m)(3) of this section shall be deemed to be an electronic submission certified, signed, and submitted by the designated representative or alternate designated representative submitting such notice of delegation.

■ 6. Section 98.6 is amended by revising the definitions of ''Supplier'' and ''United States parent company(s)'' to read as follows:

§ 98.6 Definitions.

* * * * *

Supplier means a producer, importer, or exporter in any supply category included in Table A–5 to this subpart, as defined by the corresponding subpart of this part.

* * * * *

United States parent company(s) means the highest-level United States company(s) with an ownership interest in the facility or supplier as of December 31 of the year for which data are being reported.

* * * * *

■ 7. Section 98.9 introductory text is revised to read as follows:

§ 98.9 Addresses.

All requests, notifications, and communications to the Administrator pursuant to this part must be submitted electronically and in a format as specified by the Administrator. For example, any requests, notifications and communications that can be submitted through the electronic GHG reporting tool, must be submitted through that tool. If not specified, requests, notifications or communications shall be submitted to the following address:

* * * * *

■ 8. Table A–3 to subpart A is amended by revising the entry for ''Electrical transmission and distribution equipment use'' and ''Underground coal mines'' to read as follows:

TABLE A–3 TO SUBPART A OF PART 98—SOURCE CATEGORY LIST FOR § 98.2(a)(1)

Source Categories [a] Applicable in 2010 and Future Years
* * * * * * *
Additional Source Categories [a] Applicable in 2011 and Future Years
Electrical transmission and distribution equipment use at facilities where the total nameplate capacity of SF_6 and PFC containing equipment exceeds 17,820 pounds, as determined under § 98.301 (subpart DD).
Underground coal mines liberating 36,500,000 actual cubic feet of CH_4 or more per year (subpart FF).
* * * * * * *

[a] Source categories are defined in each applicable subpart.

■ 9. Table A–5 to subpart A is amended by revising the entries for ''Petroleum product suppliers (subpart MM)'' to read as follows:

TABLE A–5 TO SUBPART A OF PART 98 —SUPPLIER CATEGORY LIST FOR § 98.2(a)(4)

Supplier Categories [a] Applicable in 2010 and Future Years
* * * * * * *
Petroleum product suppliers (subpart MM):
(A) All petroleum refineries that distill crude oil.
(B) Importers of an annual quantity of petroleum products and natural gas liquids that is equivalent to 25,000 metric tons CO_2e or more.
(C) Exporters of an annual quantity of petroleum products and natural gas liquids that is equivalent to 25,000 metric tons CO_2e or more.
* * * * * * *

[a] Suppliers are defined in each applicable subpart.

Subpart FF—[Amended]

■ 10. Section 98.322 is amended by revising paragraph (f) to read as follows:

§ 98.322 GHGs to report.

* * * * *

(f) An underground coal mine that is subject to this part because emissions from source categories described in Tables A–3, A–4 or A–5 of subpart A of this part, or from stationary combustion (subpart C of this part), is not required to report emissions under this subpart unless the coal mine liberates 36,500,000 actual cubic feet (acf) or more of methane per year from its ventilation system.

■ 11. Section 98.323 is amended by:
■ a. Revising the definitions of ''V'', ''C'', and ''P'' in Equation FF–1 of paragraph (a).
■ b. Revising the first sentence of paragraph (a)(2).
■ c. Revising the definitions of ''Vi'', ''Ci'', ''Ti'', and ''Pi'' in Equation FF–3 of paragraph (b) introductory text.
■ d. Revising the first sentence of paragraph (b)(1).
■ e. Revising paragraph (c) introductory text preceding Eq. FF–5.

The revisions read as follows:

§ 98.323 Calculating GHG emissions.

(a) * * *

V = Volumetric flow rate for the quarter (cfm) based on sampling or a flow rate meter. If a flow rate meter is used and the meter automatically corrects for temperature and pressure, replace ''520°R/T × P/1 atm'' with ''1''.

* * * * *

C = CH_4 concentration of ventilation gas for the quarter (%).

* * * * *

P = Pressure at which flow is measured (atm) for the quarter. The annual average barometric pressure from the nearest NOAA weather service station may be used as a default.

* * * * *

(2) Values of V, C, T, P, and (fH_2O), if applicable, must be based on measurements taken at least once each quarter with no fewer than 6 weeks between measurements. * * *

* * * * *

(b) * * *

V_i = Measured volumetric flow rate for the days in the week when the degasification system is in operation at that monitoring point, based on sampling or a flow rate meter (cfm). If a flow rate meter is used and the meter automatically corrects for temperature and pressure, replace ''520°R/$T_i \times P_i$/1 atm'' with ''1''.

* * * * *

C_i = CH_4 concentration of gas for the days in the week when the degasification system is in operation at that monitoring point (%).

* * * * *

T_i = Temperature at which flow is measured (°R).

P_i = Pressure at which flow is measured (atm).

* * * * *

(1) Values for V, C, T, P, and (fH_2O), if applicable, must be based on measurements taken at least once each calendar week with at least 3 days between measurements. * * *

* * * * *

(c) If gas from degasification system wells or ventilation shafts is sold, used onsite, or otherwise destroyed (including by flaring), you must calculate the quarterly CH_4 destroyed for each destruction device and each point of offsite transport to a destruction device, using Equation FF–5 of this section. You must measure CH_4 content and flow rate according to the provisions in § 98.324, and calculate the methane routed to the destruction device (CH_4) using either Equation FF–1 or Equation FF–3 of this section, as applicable.

* * * * *

■ 12. Section 98.324 is amended by:
■ a. Revising paragraphs (b)(1) and (b)(2).
■ b. Revising paragraph (c).
■ c. Revising paragraph (d).
■ d. Revising paragraph (e) introductory text.
■ e. Revising paragraphs (g) and (h).

The revisions read as follows:

§ 98.324 Monitoring and QA/QC requirements.

* * * * *

(b) * * *

(1) Collect quarterly or more frequent grab samples (with no fewer than 6 weeks between measurements) for methane concentration and make quarterly measurements of flow rate, temperature, pressure, and moisture content, if applicable. The sampling and measurements must be made at the same locations as Mine Safety and Health Administration (MSHA) inspection samples are taken, and should be taken when the mine is operating under normal conditions. You must follow MSHA sampling procedures as set forth in the MSHA Handbook entitled, General Coal Mine Inspection Procedures and Inspection Tracking System Handbook Number: PH–08–V–1, January 1, 2008 (incorporated by reference, see § 98.7). You must record the date of sampling, flow, temperature, pressure, and moisture measurements, the methane concentration (percent), the bottle number of samples collected, and the location of the measurement or collection.

(2) Obtain results of the quarterly (or more frequent) testing performed by MSHA for the methane flowrate. At the same location and within seven days of the MSHA sampling, make measurements of temperature and pressure using the same procedures

specified in paragraph (b)(1) of this section. The annual average barometric pressure from the nearest National Oceanic and Atmospheric Administration (NOAA) weather service station may be used as a default for pressure. If the MSHA data for methane flow is provided in the units of actual cubic feet of methane per day, the methane flow data is inserted into Equation FF–1 of this section in place of the value for V and the variables MCF, C/100%, and 1440 are removed from the equation.

* * * * *

(c) For CH_4 liberated at degasification systems, determine whether CH_4 will be monitored from each well and gob gas vent hole, from a centralized monitoring point, or from a combination of the two options. Operators are allowed flexibility for aggregating emissions from more than one well or gob gas vent hole, as long as emissions from all are addressed, and the methodology for calculating total emissions is documented. Monitor both gas volume and methane concentration by one of the following two options:

(1) Monitor emissions through the use of one or more continuous emissions monitoring systems (CEMS). If operators use CEMS as the basis for emissions reporting, they must provide documentation on the process for using data obtained from their CEMS to estimate emissions from their mine ventilation systems.

(2) Collect weekly (once each calendar week, with at least three days between measurements) or more frequent samples, for all degasification wells and gob gas vent holes. Determine weekly or more frequent flow rates, methane concentration, temperature, and pressure from these degasification wells and gob gas vent holes. Methane composition should be determined either by submitting samples to a lab for analysis, or from the use of methanometers at the degasification well site. Follow the sampling protocols for sampling of methane emissions from ventilation shafts, as described in § 98.324(b)(1). You must record the date of sampling, flow, temperature, pressure, and moisture measurements, the methane concentration (percent), the bottle number of samples collected, and the location of the measurement or collection.

(3) If the CH_4 concentration is determined on a dry basis and flow is determined on a wet basis or CH_4 concentration is determined on a wet basis and flow is determined on a dry basis, and the flow meter does not automatically correct for moisture content, determine the moisture content in the gas in a location near or representative of the location of:

(i) The gas flow meter at least once each calendar week; if measuring with CEMS. If only one measurement is made each calendar week, there must be at least three days between measurements; and

(ii) The grab sample, if using grab samples, at the time of the sample.

(d) Monitoring must adhere to one of the methods specified in paragraphs (d)(1) through (d)(2) of this section.

(1) ASTM D1945–03, Standard Test Method for Analysis of Natural Gas by Gas Chromatography; ASTM D1946–90 (Reapproved 2006), Standard Practice for Analysis of Reformed Gas by Gas Chromatography; ASTM D4891–89 (Reapproved 2006), Standard Test Method for Heating Value of Gases in Natural Gas Range by Stoichiometric Combustion; or ASTM UOP539–97 Refinery Gas Analysis by Gas Chromatography (incorporated by reference, see § 98.7).

(2) As an alternative to the gas chromatography methods provided in paragraph (d)(1) of this section, you may use gaseous organic concentration analyzers and a correction factor to calculate the CH_4 concentration following the requirements in paragraphs (d)(2)(i) through (d)(2)(iii) of this section.

(i) Use Method 25A or 25B at 40 CFR part 60, appendix A–7 to determine gaseous organic concentration as required in § 98.323 and in paragraphs (b) and (c) of this section. You must calibrate the instrument with CH_4 and determine the total gaseous organic concentration as carbon (or as CH_4; K=1 in Equation 25A–1 of Method 25A at 40 CFR part 60, appendix A–7).

(ii) Determine a correction factor that will be used with the gaseous organic concentrations measured in paragraph (i) of this section. The correction factor must be determined at the routine sampling location no less frequently than once a reporting year following the requirements in paragraphs (d)(2)(ii)(A) through (d)(2)(ii)(C) of this section.

(A) Take a minimum of three grab samples of the gas with a minimum of 20 minutes between samples and determine the methane composition of the gas using one of the methods specified in paragraph (d)(1) of this section.

(B) As soon as practical after each grab sample is collected and prior to the collection of a subsequent grab sample, determine the gaseous organic concentration of the gas using either Method 25A or 25B at 40 CFR part 60, appendix A–7 as specified in paragraph (d)(2)(i) of this section.

(C) Determine the arithmetic average methane concentration and the arithmetic average gaseous organic concentration of the samples analyzed according to paragraphs (d)(2)(ii)(A) and (d)(2)(ii)(B) of this section, respectively, and calculate the non-methane organic carbon correction factor as the ratio of the average methane concentration to the average total gaseous organic concentration. If the ratio exceeds 1, use 1 for the correction factor.

(iii) Calculate the CH_4 concentration as specified in Equation FF–9 of this section:

$$C_{CH4} = f_{NMOC} \times C_{TGOC} \quad \text{(Eq. FF-9)}$$

Where:

C_{CH4} = Methane (CH_4) concentration in the gas (volume %) for use in Equations FF–1 and FF–3 of this subpart.

f_{NMOC} = Correction factor from the most recent determination of the correction factor as specified in paragraph (d)(2)(ii) of this section (unitless).

C_{TGOC} = Gaseous organic carbon concentration measured using Method 25A or 25B at 40 CFR part 60, appendix A–7 during routine monitoring of the gas (volume %).

(e) All flow meters and gas composition monitors that are used to provide data for the GHG emissions calculations shall be calibrated prior to the first reporting year, using the applicable methods specified in paragraphs (d), and (e)(1) through (e)(7) of this section. Alternatively, calibration procedures specified by the flow meter manufacturer may be used. Flow meters and gas composition monitors shall be recalibrated either at the minimum frequency specified by the manufacturer or annually. The operator shall operate, maintain, and calibrate a gas composition monitor capable of measuring the concentration of CH_4 in the gas using one of the methods specified in paragraph (d) of this section. The operator shall operate, maintain, and calibrate the flow meter using any of the following test methods or follow the procedures specified by the flow meter manufacturer. Flow meters must meet the accuracy requirements in § 98.3(i).

* * * * *

(g) All temperature, pressure, and moisture content monitors must be operated and calibrated using the procedures and frequencies specified by the manufacturer.

(h) If applicable, the owner or operator shall document the procedures used to ensure the accuracy of gas flow rate, gas composition, temperature, pressure, and moisture content

measurements. These procedures include, but are not limited to, calibration of flow meters, and other measurement devices. The estimated accuracy of measurements, and the technical basis for the estimated accuracy shall be recorded.

■ 13. Section 98.325 is amended by revising the first sentence of paragraph (b) as to read follows:

§ 98.325 Procedures for estimating missing data.

* * * * *

(b) For each missing value of CH_4 concentration, flow rate, temperature, pressure, and moisture content for ventilation and degasification systems, the substitute data value shall be the arithmetic average of the quality-assured values of that parameter immediately preceding and immediately following the missing data incident. * * *

■ 14. Section 98.326 is amended by:
■ a. Revising paragraph (f).
■ b. Revising paragraph (h).
■ c. Revising paragraph (j).
■ d. Revising paragraph (k).
■ e. Revising paragraph (o).

The revisions read as follows:

§ 98.326 Data reporting requirements.

* * * * *

(f) Quarterly volumetric flow rate for each ventilation monitoring point (scfm), date and location of each measurement, and method of measurement (quarterly sampling or continuous monitoring), used in Equation FF–1 of this subpart.

* * * * *

(h) Weekly volumetric flow rate used to calculate CH_4 liberated from degasification systems (cfm) and method of measurement (sampling or continuous monitoring), used in Equation FF–3 of this subpart.

* * * * *

(j) Weekly volumetric flow rate used to calculate CH_4 destruction for each destruction device and each point of offsite transport (cfm).

(k) Weekly CH_4 concentration (%) used to calculate CH_4 flow to each destruction device and each point of offsite transport (C).

* * * * *

(o) Temperatures (°R), pressure (atm), and moisture content used in Equation FF–1 and FF–3 of this subpart, and the gaseous organic concentration correction factor, if Equation FF–9 was required.

* * * * *

Subpart II—[Amended]

■ 15. Section 98.350 is amended by revising the first sentence of paragraph (b) introductory text to read as follows:

§ 98.350 Definition of source category.

* * * * *

(b) An *anaerobic process* is a procedure in which organic matter in wastewater, wastewater treatment sludge, or other material is degraded by micro-organisms in the absence of oxygen, resulting in the generation of CO_2 and CH_4. * * *

* * * * *

■ 16. Section 98.352 is amended by revising paragraph (d) to read as follows:

§ 98.352 GHGs to report.

* * * * *

(d) You must report under subpart C of this part (General Stationary Fuel Combustion Sources) the emissions of CO_2, CH_4, and N_2O from each stationary combustion unit associated with the biogas destruction device, if present, by following the requirements of subpart C of this part.

■ 17. Section 98.353 is amended by:
■ a. Revising paragraph (a)(2) introductory text.
■ b. Revising paragraph (c) introductory text and paragraph (c)(1) introductory text preceding Equation II–4.
■ c. Revising the definitions of ''Rn'', ''Tm'', and ''Pm'' in Equation II–4 of paragraph (c)(1).
■ d. Revising paragraph (c)(2).
■ e. Revising paragraph (d) introductory text.
■ f. Revising the definition of ''Rn'' in Equation II–5 in paragraph (d)(1).
■ g. Revising paragraph (d)(2) introductory text preceding Equation II–6.
■ h. Revising Equation II–6 and revising the definition of ''CH_4E_n'', ''R_n'', ''DE_1'', and ''f_{Dest_1}'' in paragraph (d)(2).

§ 98.353 Calculating GHG emissions.

(a) * * *

(2) If you measure the concentration of organic material entering an anaerobic reactor or anaerobic lagoon using methods for the determination of 5-day biochemical oxygen demand (BOD_5), then estimate annual mass of CH_4 generated using Equation II–2 of this section.

$$CH_4G_n = \sum_{w=1}^{52}\left[Flow_w * BOD_{5,w} * B_o * MCF * 0.001\right] \qquad \text{(Eq. II-2)}$$

Where:

CH_4G_n = Annual mass of CH_4 generated from the anaerobic wastewater treatment process (metric tons).

n = Index for processes at the facility, used in Equation II–7.

w = Index for weekly measurement period.

$Flow_w$ = Volume of wastewater sent to an anaerobic wastewater treatment process in week w(m^3/week), measured as specified in § 98.354(d).

$BOD_{5,w}$ = Average weekly concentration of 5-day biochemical oxygen demand of wastewater entering an anaerobic wastewater treatment process for week w(kg/m^3), measured as specified in § 98.354(b) and (c).

B_0 = Maximum CH_4 producing potential of wastewater (kg CH_4/kg BOD_5), use the value 0.6.

MCF = CH_4 conversion factor, based on relevant values in Table II–1 to this subpart.

0.001 = Conversion factor from kg to metric tons.

* * * * *

(c) For each anaerobic sludge digester, anaerobic reactor, or anaerobic lagoon from which some biogas is recovered, estimate the annual mass of CH_4 recovered according to the requirements in paragraphs (c)(1) and (c)(2) of this section. To estimate the annual mass of CH_4 recovered, you must continuously monitor biogas flow rate and determine the volume of biogas each week and the cumulative volume of biogas each year that is collected and routed to a destruction device as specified in § 98.354(h). If the gas flow meter is not equipped with automatic correction for temperature, pressure, or, if necessary, moisture content, you must determine these parameters as specified in paragraph (c)(2)(ii) of this section.

(1) If you continuously monitor CH_4 concentration (and if necessary, temperature, pressure, and moisture content required as specified in § 98.354(f)) of the biogas that is collected and routed to a destruction device using a monitoring meter specifically for CH_4 gas, as specified in § 98.354(g), you must use this monitoring system and calculate the quantity of CH_4 recovered for destruction using Equation II–4 of this section. A fully integrated system that directly reports CH_4 quantity requires

only the summing of results of all monitoring periods for a given year.

* * * * *

R_n = Annual quantity of CH_4 recovered from the nth anaerobic reactor, sludge digester, or lagoon (metric tons CH_4/yr)

* * * * *

T_m = Average temperature at which flow is measured for the measurement period (°R). If the flow rate meter automatically corrects for temperature to 520° R, replace ''520° R/T_m'' with ''1''.

P_m = Average pressure at which flow is measured for the measurement period (atm). If the flow rate meter automatically corrects for pressure to 1 atm, replace ''P_m/1'' with ''1''.

* * * * *

(2) If you do not continuously monitor CH_4 concentration according to paragraph (c)(1) of this section, you must determine the CH_4 concentration, temperature, pressure, and, if necessary, moisture content of the biogas that is collected and routed to a destruction device according to the requirements in paragraphs (c)(2)(i) through (c)(2)(ii) of this section and calculate the quantity of CH_4 recovered for destruction using Equation II–4 of this section.

(i) Determine the CH_4 concentration in the biogas that is collected and routed to a destruction device in a location near or representative of the location of the gas flow meter at least once each calendar week; if only one measurement is made each calendar week, there must be least three days between measurements. For a given calendar week, you are not required to determine CH_4 concentration if the cumulative volume of biogas for that calendar week, determined as specified in paragraph (c) of this section, is zero.

(ii) If the gas flow meter is not equipped with automatic correction for temperature, pressure, or, if necessary, moisture content:

(A) Determine the temperature and pressure in the biogas that is collected and routed to a destruction device in a location near or representative of the location of the gas flow meter at least once each calendar week; if only one measurement is made each calendar week, there must be at least three days between measurements.

(B) If the CH_4 concentration is determined on a dry basis and biogas flow is determined on a wet basis, or CH_4 concentration is determined on a wet basis and biogas flow is determined on a dry basis, and the flow meter does not automatically correct for moisture content, determine the moisture content in the biogas that is collected and routed to a destruction device in a location near or representative of the location of the gas flow meter at least once each calendar week that the cumulative biogas flow measured as specified in § 98.354(h) is greater than zero; if only one measurement is made each calendar week, there must be at least three days between measurements.

(d) For each anaerobic sludge digester, anaerobic reactor, or anaerobic lagoon from which some quantity of biogas is recovered, you must estimate both the annual mass of CH_4 that is generated, but not recovered, according to paragraph (d)(1) of this section and the annual mass of CH_4 emitted according to paragraph (d)(2) of this section.

(1) * * *

R_n = Annual quantity of CH_4 recovered from the nth anaerobic reactor, anaerobic lagoon, or anaerobic sludge digester, as calculated in Equation II–4 of this section (metric tons CH_4).

* * * * *

(2) For each anaerobic sludge digester, anaerobic reactor, or anaerobic lagoon from which some quantity of biogas is recovered, estimate the annual mass of CH_4 emitted using Equation II–6 of this section.

$$CH_4E_n = CH_4L_n + R_n\ (1 - [\ (D_{E1} * f_{Dest\_1}) + (DE_2 * f_{Dest\_2})])\quad \text{(Eq. II-6)}$$

Where:

CH_4E_n = Annual quantity of CH_4 emitted from the process n from which biogas is recovered (metric tons).

* * * * *

R_n = Annual quantity of CH_4 recovered from the nth anaerobic reactor or anaerobic sludge digester, as calculated in Equation II–4 of this section (metric tons CH_4).

DE_1 = Primary destruction device CH_4 destruction efficiency (lesser of manufacturer's specified destruction efficiency and 0.99). If the biogas is transported off-site for destruction, use DE = 1.

f_{Dest_1} = Fraction of hours the primary destruction device was operating (device operating hours/hours in the year). If the biogas is transported off-site for destruction, use f_{Dest} = 1.

* * * * *

■ 18. Section 98.354 is amended by:

■ a. Revising the second sentence of paragraph (c).

■ b. Revising paragraph (d) introductory text.

■ c. Revising paragraph (f).

■ d. Revising paragraph (g) introductory text.

■ e. Revising paragraph (h) introductory text and paragraph (h)(5).

■ f. Revising paragraph (k).

§ 98.354 Monitoring and QA/QC requirements.

(c) * * * You must collect and analyze samples for COD or BOD_5 concentration at least once each calendar week that the anaerobic wastewater treatment process is operating; if only one measurement is made each calendar week, there must be at least three days between measurements. * * *

(d) You must measure the flowrate of wastewater entering anaerobic wastewater treatment process at least once each calendar week that the process is operating; if only one measurement is made each calendar week, there must be at least three days between measurements. You must measure the flowrate for the 24-hour period for which you collect samples analyzed for COD or BOD_5 concentration. The flow measurement location must correspond to the location used to collect samples analyzed for COD or BOD_5 concentration. You must measure the flowrate using one of the methods specified in paragraphs (d)(1) through (d)(5) of this section or as specified by the manufacturer.

* * * * *

(f) For each anaerobic process (such as anaerobic reactor, sludge digester, or lagoon) from which biogas is recovered, you must make the measurements or determinations specified in paragraphs (f)(1) through (f)(3) of this section.

(1) You must continuously measure the biogas flow rate as specified in paragraph (h) of this section and determine the cumulative volume of biogas recovered.

(2) You must determine the CH_4 concentration of the recovered biogas as specified in paragraph (g) of this section at a location near or representative of the location of the gas flow meter. You must determine CH_4 concentration either continuously or intermittently. If you determine the concentration intermittently, you must determine the concentration at least once each calendar week that the cumulative biogas flow measured as specified in paragraph (h) of this section is greater than zero, with at least three days between measurements.

(3) As specified in § 98.353(c) and paragraph (h) of this section, you must determine temperature, pressure, and moisture content as necessary to accurately determine the biogas flow

rate and CH_4 concentration. You must determine temperature and pressure if the gas flow meter or gas composition monitor do not automatically correct for temperature or pressure. You must measure moisture content of the recovered biogas if the biogas flow rate is measured on a wet basis and the CH_4 concentration is measured on a dry basis. You must also measure the moisture content of the recovered biogas if the biogas flow rate is measured on a dry basis and the CH_4 concentration is measured on a wet basis.

(g) For each anaerobic process (such as an anaerobic reactor, sludge digester, or lagoon) from which biogas is recovered, operate, maintain, and calibrate a gas composition monitor capable of measuring the concentration of CH_4 in the recovered biogas using one of the methods specified in paragraphs (g)(1) through (g)(6) of this section or as specified by the manufacturer.

* * * * *

(h) For each anaerobic process (such as an anaerobic reactor, sludge digester, or lagoon) from which biogas is recovered, install, operate, maintain, and calibrate a gas flow meter capable of continuously measuring the volumetric flow rate of the recovered biogas using one of the methods specified in paragraphs (h)(1) through (h)(8) of this section or as specified by the manufacturer. Recalibrate each gas flow meter either biennially (every 2 years) or at the minimum frequency specified by the manufacturer. Except as provided in § 98.353(c)(2)(iii), each gas flow meter must be capable of correcting for the temperature and pressure and, if necessary, moisture content.

* * * * *

(5) ASME MFC–11M–2006 Measurement of Fluid Flow by Means of Coriolis Mass Flowmeters (incorporated by reference, see § 98.7). The mass flow must be corrected to volumetric flow based on the measured temperature, pressure, and biogas composition.

* * * * *

(k) If applicable, the owner or operator must document the procedures used to ensure the accuracy of measurements of COD or BOD_5 concentration, wastewater flow rate, biogas flow rate, biogas composition, temperature, pressure, and moisture content. These procedures include, but are not limited to, calibration of gas flow meters, and other measurement devices. The estimated accuracy of measurements made with these devices must also be recorded, and the technical basis for these estimates must be documented.

■ 19. Section 98.355 is amended by revising paragraph (b) to read as follows:

§ 98.355 Procedures for estimating missing data

* * * * *

(b) For each missing value of the CH_4 content or biogas flow rates, the substitute data value must be the arithmetic average of the quality-assured values of that parameter immediately preceding and immediately following the missing data incident.

* * * * *

■ 20. Section 98.356 is amended by:
■ a. Revising paragraph (a) introductory text.
■ b. Revising paragraphs (b)(3) and (b)(4).
■ c. Revising paragraph (d) introductory text and paragraphs (d)(2), (d)(4), (d)(6), and (d)(8).

§ 98.356 Data reporting requirements.

* * * * *

(a) A description or diagram of the industrial wastewater treatment system, identifying the processes used to treat industrial wastewater and industrial wastewater treatment sludge. Indicate how the processes are related to each other and identify the anaerobic processes. Provide a unique identifier for each anaerobic process, indicate the average depth in meters of each anaerobic lagoon, and indicate whether biogas generated by each anaerobic process is recovered. The anaerobic processes must be identified as:

* * * * *

(b) * * *

(3) Maximum CH_4 production potential (B_0) used as an input to Equation II–1 or II–2 of this subpart, from Table II–1 to this subpart.

(4) Methane conversion factor (MCF) used as an input to Equation II–1 or II–2 of this subpart, from Table II–1 to this subpart.

* * * * *

(d) For each anaerobic wastewater treatment process and anaerobic sludge digester from which some biogas is recovered, you must report:

* * * * *

(2) Total weekly volumetric biogas flow for each week (up to 52 weeks/year) that biogas is collected for destruction.

* * * * *

(4) Weekly average biogas temperature for each week at which flow is measured for biogas collected for destruction, or statement that temperature is incorporated into monitoring equipment internal calculations.

* * * * *

(6) Weekly average biogas pressure for each week at which flow is measured for biogas collected for destruction, or statement that pressure is incorporated into monitoring equipment internal calculations.

* * * * *

(8) Whether destruction occurs at the facility or off-site. If destruction occurs at the facility, also report whether a back-up destruction device is present at the facility, the annual operating hours for the primary destruction device, the annual operating hours for the back-up destruction device (if present), the destruction efficiency for the primary destruction device, and the destruction efficiency for the back-up destruction device (if present).

* * * * *

Subpart OO—[Amended]

■ 21. Section 98.416 is amended by removing and reserving paragraphs (a)(8) and (a)(9) and revising paragraph (a)(10) to read as follows:

§ 98.416 Data reporting requirements.

* * * * *

(a) * * *

(8) [Reserved]

(9) [Reserved]

(10) Mass in metric tons of any fluorinated GHG or nitrous oxide fed into the transformation process, by process.

* * * * *

■ 22. Section 98.417 is amended by adding paragraphs (a)(3) and (a)(4) to read as follows:

§ 98.417 Records that must be retained.

(a) * * *

(3) Dated records of the total mass in metric tons of each reactant fed into the F–GHG or nitrous oxide production process, by process.

(4) Dated records of the total mass in metric tons of the reactants, by-products, and other wastes permanently removed from the F–GHG or nitrous oxide production process, by process.

* * * * *

Subpart RR—[Amended]

■ 23. Section 98.442 is amended by revising paragraphs (e) and (f) to read as follows:

§ 98.442 GHGs to report.

* * * * *

(e) Mass of CO_2 emissions from equipment leaks and vented emissions of CO_2 from surface equipment located between the injection flow meter and the injection wellhead.

(f) Mass of CO_2 emissions from equipment leaks and vented emissions

of CO_2 from surface equipment located between the production flow meter and the production wellhead.

* * * * *

■ 24. Section 98.443 is amended by:
■ a. Revising paragraph (d) introductory text.
■ b. Revising paragraph (d)(3) introductory text.
■ c. Revising the definition of ''CO_{2FI}'' and ''CO_{2FP}'' in Equation RR–11 of paragraph (f)(1).
■ d. Revising the definition of ''CO_{2FI}'' in Equation RR–12 of paragraph (f)(2).

§ 98.443 Calculating CO_2 geologic sequestration.

* * * * *

(d) You must calculate the annual mass of CO_2 produced from oil or gas production wells or from other fluid wells for each separator that sends a stream of gas into a recycle or end use system in accordance with the procedures specified in paragraphs (d)(1) through (d)(3) of this section. You must account for any CO_2 that is produced and not processed through a separator. You must account only for wells that produce the CO_2 that was injected into the well or wells covered by this source category.

* * * * *

(3) To aggregate production data, you must sum the mass of all of the CO_2 separated at each gas-liquid separator in accordance with the procedure specified in Equation RR–9 of this section. You must assume that the total CO_2 measured at the separator(s) represents a percentage of the total CO_2 produced. In order to account for the percentage of CO_2 produced that is estimated to remain with the produced oil or other fluid, you must multiply the quarterly mass of CO_2 measured at the separator(s) by a percentage estimated using a methodology in your approved MRV plan. If fluids containing CO_2 from injection wells covered under this source category are produced and not processed through a gas-liquid separator, the concentration of CO_2 in the produced fluids must be measured at a flow meter located prior to reinjection or reuse using methods in § 98.444(f)(1). The considerations you intend to use to calculate CO_2 from produced fluids for the mass balance equation must be described in your approved MRV plan in accordance with § 98.448(d)(5).

$$CO_{2P} = (1+X) * \sum_{w=1}^{W} CO_{2,w} \qquad \text{(Eq. RR-9)}$$

Where:

CO_{2P} = Total annual CO_2 mass produced (metric tons) through all separators in the reporting year.

$CO_{2,w}$ = Annual CO_2 mass produced (metric tons) through separator w in the reporting year.

X = Entrained CO_2 in produced oil or other fluid divided by the CO_2 separated through all separators in the reporting year (weight percent CO_2, expressed as a decimal fraction).

w = Separator.

(f) * * *

(1) * * *

* * * * *

CO_{2FI} = Total annual CO_2 mass emitted (metric tons) from equipment leaks and vented emissions of CO_2 from equipment located on the surface between the flow meter used to measure injection quantity and the injection wellhead, for which a calculation procedure is provided in subpart W of this part.

CO_{2FP} = Total annual CO_2 mass emitted (metric tons) from equipment leaks and vented emissions of CO_2 from equipment located on the surface between the production wellhead and the flow meter used to measure production quantity, for which a calculation procedure is provided in subpart W of this part.

(2) * * *

* * * * *

CO_{2FI} = Total annual CO_2 mass emitted (metric tons) from equipment leaks and vented emissions of CO_2 from equipment located on the surface between the flow meter used to measure injection quantity and the injection wellhead.

■ 25. Section 98.444 is amended by revising the heading of paragraph (d) to read as follows:

§ 98.444 Monitoring and QA/QC requirements.

* * * * *

(d) *CO_2 emissions from equipment leaks and vented emissions of CO_2.*

* * *

* * * * *

■ 26. Section 98.445 is amended by revising paragraph (e) to read as follows:

§ 98.445 Procedures for estimating missing data.

* * * * *

(e) For any values associated with CO_2 emissions from equipment leaks and vented emissions of CO_2 from surface equipment at the facility that are reported in this subpart, missing data estimation procedures should be followed in accordance with those specified in subpart W of this part.

* * * * *

■ 27. Section 98.446 is amended by:
■ a. Revising paragraph (a)(2) introductory text and (a)(3) introductory text.
■ b. Revising paragraph (e).
■ c. Revising paragraph (f) introductory text.
■ d. Revising paragraph (f)(1)(vii).
■ e. Revising paragraph (f)(3).

§ 98.446 Data reporting requirements.

* * * * *

(a) * * *

(2) If a volumetric flow meter is used to receive CO_2 report the following unless you reported yes to paragraph (a)(4) of this section:

* * * * *

(3) If a mass flow meter is used to receive CO_2 report the following unless you reported yes to paragraph (a)(4) of this section:

* * * * *

(e) Report the date that you began collecting data for calculating total amount sequestered according to § 98.448(a)(7) of this subpart.

(f) Report the following. If the date specified in paragraph (e) of this section is during the reporting year for this annual report, report the following starting on the date specified in paragraph (e) of this section.

(1) * * *

(vii) The standard used to calculate each value in paragraphs (f)(1)(ii) through (f)(1)(iv) of this section.

* * * * *

(3) For CO_2 emissions from equipment leaks and vented emissions of CO_2, report the following:

(i) The mass of CO_2 emitted (in metric tons) annually from equipment leaks and vented emissions of CO_2 from equipment located on the surface between the flow meter used to measure injection quantity and the injection wellhead.

(ii) The mass of CO_2 emitted (in metric tons) annually from equipment leaks and vented emissions of CO_2 from equipment located on the surface between the production wellhead and the flow meter used to measure production quantity.

* * * * *

■ 28. Section 98.447 is amended by revising paragraphs (a)(5) and (a)(6) to read as follows:

§ 98.447 Records that must be retained.

(a) * * *

(5) Annual records of information used to calculate the CO_2 emitted from equipment leaks and vented emissions of CO_2 from equipment located on the surface between the flow meter used to measure injection quantity and the injection wellhead.

(6) Annual records of information used to calculate the CO_2 emitted from equipment leaks and vented emissions of CO_2 from equipment located on the surface between the production wellhead and the flow meter used to measure production quantity.

* * * * *

■ 29. Section 98.448 is amended by revising paragraphs (a)(5) and (e) to read as follows:

§ 98.448 Geologic sequestration monitoring, reporting, and verification (MRV) plan.

(a) * * *

(5) A summary of the considerations you intend to use to calculate site-specific variables for the mass balance equation. This includes, but is not limited to, considerations for calculating CO_2 emissions from equipment leaks and vented emissions of CO_2 between the injection flow meter and injection well and/or the production flow meter and production well, and considerations for calculating CO_2 in produced fluids.

* * * * *

(e) *Revised MRV plan.* The requirements of paragraph (c) of this section apply to any submission of a revised MRV plan. You must continue reporting under your currently approved plan while awaiting approval of a revised MRV plan.

* * * * *

■ 30. Section 98.449 is amended by revising the definition of ''CO_2 received'' to read as follows:

§ 98.449 Definitions.

* * * * *

CO_2 received means the CO_2 stream that you receive to be injected for the first time into a well on your facility that is covered by this subpart. CO_2 received includes, but is not limited to, a CO_2 stream from a production process unit inside your facility and a CO_2 stream that was injected into a well on another facility, removed from a discontinued enhanced oil or natural gas or other production well, and transferred to your facility.

* * * * *

Subpart TT—[Amended]

■ 31. Section 98.460 is amended by revising paragraphs (c)(1) and (c)(2)(i) to read as follows:

§ 98.460 Definition of the source category.

* * * * *

(c) * * *

(1) Construction and demolition waste landfills.

(2) * * *

(i) Coal combustion or incinerator ash (*e.g.,* fly ash).

* * * * *

■ 32. Section 98.463 is amended by:

■ a. Revising paragraph (a)(1).

■ b. Revising paragraph (a)(2) introductory text.

■ c. Revising paragraph (a)(2)(ii)(C).

§ 98.463 Calculating GHG emissions.

(a) * * *

(1) Calculate annual modeled CH_4 generation using Equation TT–1 of this section.

$$G_{CH4} = \left[\sum_{x=S}^{T-1} \left\{ W_x \times DOC_x \times MCF \times DOC_F \times F \times \frac{16}{12} \times \left(e^{-k(T-x-1)} - e^{-k(T-x)} \right) \right\} \right] \quad \text{(Eq. TT-1)}$$

Where:

G_{CH4} = Modeled methane generation in reporting year T (metric tons CH_4).

X = Year in which waste was disposed.

S = Start year of calculation. Use the year 1960 or the opening year of the landfill, whichever is more recent.

T = Reporting year for which emissions are calculated.

W_x = Quantity of waste disposed in the industrial waste landfill in year X from measurement data and/or other company records (metric tons, as received (wet weight)).

DOC_x = Degradable organic carbon for waste disposed in year X from Table TT–1 to this subpart or from measurement data [as specified in paragraph (a)(3) of this section], if available [fraction (metric tons C/metric ton waste)].

DOC_F = Fraction of DOC dissimilated (fraction); use the default value of 0.5.

MCF = Methane correction factor (fraction). Use the default value of 1 unless there is active aeration of waste within the landfill during the reporting year. If there is active aeration of waste within the landfill during the reporting year, use either the default value of 1 or select an alternative value no less than 0.5 based on site-specific aeration parameters.

F_x = Fraction by volume of CH_4 in landfill gas (fraction, dry basis, corrected to 0% oxygen). If you have a gas collection system, use the annual average CH_4 concentration from measurement data for the current reporting year; otherwise, use the default value of 0.5.

k = Decay rate constant from Table TT–1 to this subpart (yr − 1). Select the most applicable k value for the majority of the past 10 years (or operating life, whichever is shorter).

(2) *Waste stream quantities.* Determine annual waste quantities as specified in paragraphs (a)(2)(i) through (ii) of this section for each year starting with January 1, 1960 or the year the landfills first accepted waste if after January 1, 1960, up until the most recent reporting year. The choice of method for determining waste quantities will vary according to the availability of historical data. Beginning in the first emissions reporting year (2011 or later) and for each year thereafter, use the procedures in paragraph (a)(2)(i) of this section to determine waste stream quantities. These procedures should also be used for any year prior to the first emissions reporting year for which the data are available. For other historical years, use paragraph (a)(2)(i) of this section, where waste disposal records are available, and use the procedures outlined in paragraph (a)(2)(ii) of this section when waste disposal records are unavailable, to determine waste stream quantities. Historical disposal quantities deposited (*i.e.,* prior to the first year in which monitoring begins) should only be determined once, as part of the first annual report, and the same values should be used for all subsequent annual reports, supplemented by the next year's data on new waste disposal.

* * * * *

(ii) * * *

(C) For any year in which historic production or processing data are not available such that historic waste quantities cannot be estimated using Equation TT–3 of this section, calculate an average annual bulk waste disposal quantity using either Equation TT–4a of this section when data are available consecutively for the most recent disposal years or Equation TT–4b of this section when data are available for sporadic (non-consecutive) years.

$$W_x = \frac{LFC}{(YrData - YrOpen + 1)} \qquad \text{(Eq. TT-4a)}$$

Where:

W_x = Quantity of waste placed in the landfill in year X (metric tons, wet basis). This annual bulk waste disposal quantity applies for all years from ''YrOpen'' to ''YrData'' inclusive.

LFC = Capacity of the landfill used (or the total quantity of waste-in-place) at the end of the ''YrData'' from design drawings or engineering estimates (metric tons). For closed landfills for which waste quantity data are not available, use the landfill's design capacity.

YrData = The year prior to the year when waste disposal data are first available for all subsequent years from company records or from Equation TT–3 of this section. For landfills for which waste quantity data are not available, the year in which the landfill last received waste.

YrOpen = Year 1960 or the year in which the landfill first received waste from company records, whichever is more recent. If no data are available for estimating YrOpen for a closed landfill, use 1960 as the default ''YrOpen'' for the landfill.

$$W_x = \frac{WIP - \sum_{n-1}^{NYrData} W_{meas,n}}{(YrLast - YrOpen + 1 - NYrData)} \qquad \text{(Eq. TT-4b)}$$

Where:

W_x = Quantity of waste placed in the landfill in year X (metric tons, wet basis). This annual bulk waste disposal quantity applies for all years for which waste quantity data are not available from company records or from Equation TT–3 of this section.

WIP = Quantity of waste in-place at the start of the reporting year from design drawings or engineering estimates (metric tons). For closed landfills for which waste in-place quantities are not available, use the landfill's design capacity.

$W_{meas,n}$ = Annual quantity of waste placed in the landfill for the nth measurement year from company records or from Equation TT–3 of this section.

YrLast = The last year, prior to the reporting year, that the landfill received waste.

YrOpen = Year 1960 or the year in which the landfill first received waste from company records, whichever is more recent. If no data are available for estimating YrOpen for a closed landfill, use 1960 as the default ''YrOpen'' for the landfill.

NYrData = The number of years for which annual waste disposal quantities are available from company records or from Equation TT–3 of this section from YrOpen to YrLast inclusive.

* * * * *

■ 33. Section 98.464 is amended by:

■ a. Revising paragraph (b) introductory text.

■ b. Revising paragraph (b)(1).

■ c. Revising paragraph (b)(3).

■ d. Revising paragraph (b)(4).

■ e. Redesignating paragraphs (c), (d), (e), and (f) as paragraphs (d), (e), (f), and (h), respectively.

■ f. Adding a new paragraph (c).

■ g. Adding paragraph (g).

§ 98.464 Monitoring and QA/QC requirements.

* * * * *

(b) For each waste stream placed in the landfill during the reporting year for which you choose to determine volatile solids concentration for the purposes of § 98.460(c)(2)(xii) or choose to determine a landfill-specific DOC_x for use in Equation TT–1 of this subpart, you must collect and test a representative sample of that waste stream using the methods specified in paragraphs (b)(1) through (b)(4) of this section.

(1) Develop and follow a sampling plan to collect a representative sample (in terms of composition and moisture content) of each waste stream placed in the landfill for which testing is elected.

* * * * *

(3) For the purposes of § 98.460(c)(2)(xii), the volatile solids concentration (weight percent on a dry basis) is the percent volatile solids determined using Standard Method 2540G ''Total, Fixed, and Volatile Solids in Solid and Semisolid Samples'' (incorporated by reference; see § 98.7).

(4) Determine DOC value of a waste stream by either using at least a 60-day anaerobic biodegradation test as specified in paragraph (b)(4)(i) of this section or by estimating the DOC value based on the total and volatile solids measurements as specified in paragraph (b)(4)(ii) of this section.

(i) Perform an anaerobic biodegradation test and determine the DOC value of a waste stream following the procedures and requirements in paragraphs (b)(4)(i)(A) through (E) of this section.

(A) You may use the procedures published by a consensus-based standards organization to conduct a minimum of a 60-day anaerobic biodegradation test. Consensus-based standards organizations include, but are not limited to, the following: ASTM International (100 Barr Harbor Drive, P.O. Box CB700, West Conshohocken, Pennsylvania 19428–B2959, (800) 262–1373, *http://www.astm.org*), the American National Standards Institute (ANSI, 1819 L Street, NW., 6th floor, Washington, DC 20036, (202) 293–8020, *http://www.ansi.org*), the American Society of Mechanical Engineers (ASME, Three Park Avenue, New York, NY 10016–5990, (800) 843–2763, *http://www.asme.org*), and the North American Energy Standards Board (NAESB, 801 Travis Street, Suite 1675, Houston, TX 77002, (713) 356–0060, *http://www.api.org*).

(B) Use a minimum of four samples: Two waste stream samples, a control sample using a known substrate (such as ethanol), and a digester sludge blank sample. Each waste stream sample must be appropriately ground to ensure the waste material is fully exposed to the anaerobic digester sludge.

(C) Determine the net mass of carbon degraded in the control sample as the difference in the results of the control sample and the digester sludge blank sample. Determine the net mass of carbon degraded in each waste stream sample as the difference in the results of each waste stream sample and the digester sludge blank sample.

(D) Determine the fraction of carbon degraded in the control sample as the net mass of carbon degraded in the control sample divided by the mass of carbon added via the substrate material in the control sample. If less than 50 percent of the theoretical mass of carbon in the control sample is degraded, the test run is invalid.

(E) Determine the DOC of each waste sample using Equation TT–7 of this section. If the DOC values for the two waste stream samples differ by more than 20 percent, the test run is invalid.

The DOC of the waste stream is determined as the average DOC value of the two waste stream samples determined during a valid test.

$$DOC_x = \left(\frac{1}{DOC_F}\right)\left(\frac{MCD_{sample,x}}{M_{sample,x}}\right)\Bigg/\left(\frac{MCD_{control}}{MC_{control}}\right) \qquad \text{(Eq. TT-7)}$$

Where:

DOC_x = Degradable organic content of the waste stream in Year X (weight fraction, wet basis)

DOC_F = Fraction of DOC dissimilated (fraction); use the default value of 0.5.

$MCD_{sample,x}$ = Mass of carbon degraded in the waste stream sample in Year X as determined in paragraph (b)(4)(i)(C) of this section [milligrams (mg)].

$M_{sample,x}$ = Mass of waste stream sample used in the anaerobic degradation test in Year X (mg, wet basis).

$MCD_{control}$ = Mass of carbon degraded in the control sample as determined in paragraph (b)(4)(i)(B) of this section (mg).

$MC_{control}$ = Mass of carbon added to the control sample via the substrate material in the anaerobic degradation (mg).

(ii) Calculate the waste stream-specific DOC_x value using Equation TT–8 of this section.

$$DOC_x = F_{DOC} \times \frac{\%\ Volatile\ Solids_x}{100\%} \times \frac{\%\ Total\ Solids_x}{100\%} \qquad \text{(Eq. TT-8)}$$

Where:

DOC_x = Degradable organic content of waste stream in Year X (weight fraction, wet basis)

F_{DOC} = Fraction of the volatile residue that is degradable organic carbon (weight fraction). Use a default value of 0.6.

% Volatile $Solids_x$ = Percent volatile solids determined using Standard Method 2540G Total, ''Fixed, and Volatile Solids in Solid and Semisolid Samples'' (incorporated by reference; see § 98.7) for Year X [milligrams (mg) volatile solids per 100 mg dried solids].

% Total $Solids_x$ = Percent total solids determined using Standard Method 2540G ''Total, Fixed, and Volatile Solids in Solid and Semisolid Samples'' (incorporated by reference; see § 98.7) for Year X (mg dried solids per 100 mg wet waste).

(c) For each waste stream for which you choose to determine volatile solids concentration for the purposes of paragraph § 98.460(c)(2)(xii), and that was historically managed in the landfill but was not received during the first reporting year, you must determine volatile solids concentration of the waste stream as initially placed in the landfill using the methods specified in paragraph (c)(1) or (c)(2) of this section, as applicable.

(1) If you can identify a similar waste stream to the waste stream that was historically managed in the landfill, you must determine the volatile solids concentration of the similar waste stream using the procedures in paragraphs (b)(1) through (b)(3) of this section.

(2) If you cannot identify a similar waste stream to the waste stream that was historically managed in the landfill, you may determine the volatile solids concentration of the historically managed waste stream using process knowledge. You must document the basis for volatile solids concentration as determined through process knowledge.

* * * * *

(g) For landfills electing to measure the fraction by volume of CH_4 in landfill gas (F), follow the requirements in paragraphs (g)(1) and (g)(2) of this section.

(1) Use a gas composition monitor capable of measuring the concentration of CH_4 on a dry basis that is properly operated, calibrated, and maintained according to the requirements specified at § 98.344(b). You must either use a gas composition monitor that is also capable of measuring the O_2 concentration correcting for excess (infiltration) air or you must operate, maintain, and calibrate a second monitor capable of measuring the O_2 concentration on a dry basis according to the manufacturer's specifications.

(2) Use Equation TT–9 of this section to correct the measured CH_4 concentration to 0% oxygen. If multiple CH_4 concentration measurements are made during the reporting year, determine F separately for each measurement made during the reporting year, and use the results to determine the arithmetic average value of F for use in Equation TT–1 of this part.

$$F = \left(\frac{C_{CH4}}{100\%}\right) \times \left[20.9_c \Big/ \left(20.9 - \%O_2\right)\right] \qquad \text{(Eq. TT-9)}$$

Where:

F = Fraction by volume of CH_4 in landfill gas (fraction, dry basis, corrected to 0% oxygen).

C_{CH4} = Measured CH_4 concentration in landfill gas (volume %, dry basis).

20.9_c = Defined O_2 correction basis, (volume %, dry basis).

20.9 = O_2 concentration in air (volume %, dry basis).

$\%O_2$ = Measured O_2 concentration in landfill gas (volume %, dry basis).

* * * * *

■ 34. Section 98.466 is amended by:

■ a. Revising paragraph (b) introductory text.

■ b. Revising paragraph (b)(2).

■ c. Adding paragraphs (b)(3) and (b)(4).

■ d. Revising paragraph (c)(3)(ii).

■ e. Revising paragraph (d).

■ f. Revising paragraph (f).

■ g. Revising paragraph (g)(1).

§ 98.466 Data reporting requirements.

* * * * *

(b) Report the following waste characterization and modeling information:

* * * * *

(2) A description of each waste stream (including the types of materials in each waste stream) for which Equation TT–1 of this subpart is used to calculate modeled CH_4 generation.

(3) The fraction of CH_4 in the landfill gas, F, (volume fraction, dry basis, corrected to 0% oxygen) for the

reporting year and an indication as to whether this was the default value or a value determined through measurement data.

(4) The methane correction factor (MCF) value used in the calculations. If an MCF value other than the default of 1 is used, provide a description of the aeration system, including aeration blower capacity, the fraction of the landfill containing waste affected by the aeration, the total number of hours during the year the aeration blower was operated, and other factors used as a basis for the selected MCF value.

(c) * * *

(3) * * *

(ii) The year, the waste disposal quantity and production quantity for each year used in Equation TT–2 of this subpart to calculate the average waste disposal factor (WDF).

* * * * *

(d) For each year of landfilling starting with the ''Start Year'' (S) and each year thereafter up to the current reporting year, report the following information:

(1) The calendar year for which the following data elements apply.

(2) The quantity of waste (W_x) disposed of in the landfill (metric tons, wet weight) for the specified year for each waste stream identified in paragraph (b) of this section.

(3) The degradable organic carbon (DOC_x) value (mass fraction) for the specified year and an indication as to whether this was the default value from Table TT–1 to this subpart, a measured value using a 60-day anaerobic biodegradation test as specified in § 98.464(b)(4)(i), or a value based on total and volatile solids measurements as specified in § 98.464(b)(4)(ii). If DOC_x was determined by a 60-day anaerobic biodegradation test, specify the test method used.

* * * * *

(f) The modeled annual methane generation (G_{CH4}) for the reporting year (metric tons CH_4) calculated using Equation TT–1 of this subpart.

(g) * * *

(1) The annual methane emissions (*i.e.*, the methane generation (MG), adjusted for oxidation, calculated using Equation TT–6 of this subpart), reported in metric tons CH_4.

* * * * *

■ 35. Section 98.467 is revised to read as follows:

§ 98.467 Records that must be retained.

In addition to the information required by § 98.3(g), you must retain the calibration records for all monitoring equipment, including the method or manufacturer's specification used for calibration, and all measurement data used for the purposes of paragraph § 98.460(c)(2)(xii) or used to determine landfill-specific DOC_x values.

■ 36. Section 98.468 is amended by adding, in alphabetical order, the definitions for ''Construction and demolition (C&D) waste landfill'' and ''Design capacity'' to read as follows:

§ 98.468 Definitions.

* * * * *

Construction and demolition (C&D) waste landfill means a solid waste disposal facility subject to the requirements of subparts A or B of part 257 of this chapter that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) or industrial solid waste (defined in § 258.2 of this chapter) or municipal solid waste (defined in § 98.6 of this part) other than residential lead-based paint waste. A C&D waste landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.

Design capacity means the maximum amount of solid waste a landfill can accept. For the purposes of this subpart, for landfills that have a permit, the *design capacity* can be determined in terms of volume or mass in the most recent permit issued by the state, local, or Tribal agency responsible for regulating the landfill, plus any in-place waste not accounted for in the most recent permit. If the owner or operator chooses to convert the design capacity from volume to mass to determine its design capacity, the calculation must include a site-specific density. If the design capacity is within 10 percent of the applicability threshold in § 98.460(a) and there is a change in the production process that can reasonably be expected to change the site-specific waste density, the site-specific waste density must be redetermined and the design capacity must be recalculated based on the new waste density.

* * * * *

■ 37. Table TT–1 to subpart TT is amended by revising the entries for ''Construction and Demolition'' and ''Inert Waste [*i.e.*, wastes listed in § 98.460(b)(3)]'' and footnote a to read as follows:

TABLE TT–1 TO SUBPART TT—DEFAULT DOC AND DECAY RATE VALUES FOR INDUSTRIAL WASTE LANDFILLS

Industry/waste type	DOC (weight fraction, wet basis)	k [dry climate [a]] (yr^{-1})	k [moderate climate [a]] (yr^{-1})	k [wet climate [a]] (yr^{-1})
* * * *		*	*	*
Construction and Demolition	0.08	0.02	0.03	0.04
Inert Waste [*i.e.*, wastes listed in § 98.460(c)(2)]	0	0	0	0
* * * *		*	*	*

[a] The applicable climate classification is determined based on the annual rainfall plus the recirculated leachate application rate. Recirculated leachate application rate (in inches/year) is the total volume of leachate recirculated from company records or engineering estimates and applied to the landfill divided by the area of the portion of the landfill containing waste [with appropriate unit conversions].

(1) Dry climate = precipitation plus recirculated leachate less than 20 inches/year

(2) Moderate climate = precipitation plus recirculated leachate from 20 to 40 inches/year (inclusive)

(3) Wet climate = precipitation plus recirculated leachate greater than 40 inches/year

Alternatively, landfills that use leachate recirculation can elect to use the k value for wet climate rather than calculating the recirculated leachate rate.

[FR Doc. 2011–29742 Filed 11–28–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 76 Tuesday,
No. 229 November 29, 2011

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 229
List of Fisheries for 2012; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 110207104–1536–02]

RIN 0648–BA76

List of Fisheries for 2012

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final List of Fisheries (LOF) for 2012, as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2012 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The classification of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan (TRP) requirements.

DATES: This final rule is effective January 1, 2012.

ADDRESSES: Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this final rule, should be submitted in writing to Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or to Nathan Frey, OMB, by fax to (202) 395–7285 or by email to *Nathan_Frey@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: Melissa Andersen, Office of Protected Resources, (301) 713–2322; David Gouveia, Northeast Region, (978) 281–9280; Laura Engleby, Southeast Region, (727) 551–5791; Elizabeth Petras, Southwest Region, (562) 980–3238; Brent Norberg, Northwest Region, (206) 526–6733; Bridget Mansfield, Alaska Region, (907) 586–7642; Lisa Van Atta, Pacific Islands Region, (808) 944–2257. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–(800) 877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Availability of Published Materials

Information regarding the LOF and the Marine Mammal Authorization Program, including registration procedures and forms, current and past LOFs, information on each Category I and II fishery, observer requirements, and marine mammal injury/mortality reporting forms and submittal procedures, may be obtained at: *http://www.nmfs.noaa.gov/pr/interactions/lof/,* or from any NMFS Regional Office at the addresses listed below:

NMFS, Northeast Region, 55 Great Republic Drive, Gloucester, MA 01930–2298, Attn: Allison Rosner;

NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701, Attn: Laura Engleby;

NMFS, Southwest Region, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213, Attn: Charles Villafana;

NMFS, Northwest Region, 7600 Sand Point Way NE., Seattle, WA 98115, Attn: Protected Resources Division;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9th Street, Juneau, AK 99802, Attn: Bridget Mansfield; or

NMFS, Pacific Islands Region, Protected Resources, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814–4700, Attn: Lisa Van Atta.

What is the list of fisheries?

Section 118 of the MMPA requires NMFS to place all U.S. commercial fisheries into one of three categories based on the level of incidental serious injury and mortality of marine mammals occurring in each fishery (16 U.S.C. 1387(c)(1)). The classification of a fishery on the LOF determines whether participants in that fishery may be required to comply with certain provisions of the MMPA, such as registration, observer coverage, and TRP requirements. NMFS must reexamine the LOF annually, considering new information in the Marine Mammal Stock Assessment Reports (SAR) and other relevant sources, and publish in the **Federal Register** any necessary changes to the LOF after notice and opportunity for public comment (16 U.S.C. 1387(c)(1)(C)).

How does NMFS determine in which category a fishery is placed?

The definitions for the fishery classification criteria can be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2). The criteria are also summarized here.

Fishery Classification Criteria

The fishery classification criteria consist of a two-tiered, stock-specific approach that first addresses the total impact of all fisheries on each marine mammal stock, and then addresses the impact of individual fisheries on each stock. This approach is based on consideration of the rate, in numbers of animals per year, of incidental mortalities and serious injuries of marine mammals due to commercial fishing operations relative to the potential biological removal (PBR) level for each marine mammal stock. The MMPA (16 U.S.C. 1362(20)) defines the PBR level as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population. This definition can also be found in the implementing regulations for section 118 of the MMPA (50 CFR 229.2).

Tier 1: If the total annual mortality and serious injury of a marine mammal stock, across all fisheries, is less than or equal to 10 percent of the PBR level of the stock, all fisheries interacting with the stock would be placed in Category III (unless those fisheries interact with other stock(s) in which total annual mortality and serious injury is greater than 10 percent of PBR). Otherwise, these fisheries are subject to the next tier (Tier 2) of analysis to determine their classification.

Tier 2, Category I: Annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level (*i.e.,* frequent incidental mortality and serious injuries of marine mammals).

Tier 2, Category II: Annual mortality and serious injury of a stock in a given fishery is greater than 1 percent and less than 50 percent of the PBR level (*i.e.,* occasional incidental mortality and serious injuries of marine mammals).

Tier 2, Category III: Annual mortality and serious injury of a stock in a given fishery is less than or equal to 1 percent of the PBR level (*i.e.,* a remote likelihood or no known incidental mortality and serious injuries of marine mammals).

While Tier 1 considers the cumulative fishery mortality and serious injury for a particular stock, Tier 2 considers fishery-specific mortality and serious injury for a particular stock. Additional details regarding how the categories were determined are provided in the preamble to the final rule implementing section 118 of the MMPA (60 FR 45086, August 30, 1995).

Because fisheries are classified on a per-stock basis, a fishery may qualify as one Category for one marine mammal stock and another Category for a different marine mammal stock. A fishery is typically classified on the LOF at its highest level of classification (*e.g.,* a fishery qualifying for Category III for one marine mammal stock and for Category II for another marine mammal stock will be listed under Category II).

Other Criteria That May Be Considered

There are several fisheries on the LOF classified as Category II that have no recent documented injuries or mortalities of marine mammals, or fisheries that did not result in a serious injury or mortality rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries as Category II by analogy to other Category I or II fisheries (NMFS does not classify fisheries as Category I based on analogy) that are sufficiently analogous to the fishery in question (*e.g.,* use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals), or according to factors discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995) and listed in the regulatory definition of a Category II fishery. The regulations at 50 CFR 229.2 state that in the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury or mortality is ''occasional'' or ''remote'' by ''* * * evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries.'' Further, eligible commercial fisheries not specifically identified on the LOF are deemed to be Category II fisheries until the next LOF is published (50 CFR 229.2).

Information That May Be Considered When Classifying Fisheries

Under regulations pursuant to section 118 of the MMPA, observer data, logbook data, stranding data, fishers' reports, anecdotal reports, and information on incidental serious injury or mortality to marine mammals reported in SARs are used to classify fisheries (60 FR 45086, August 30, 1995; 60 FR 67063, December 28, 1995). Further, the factors for consideration laid out in 50 CFR 229.2 (fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries), generally termed ''analogy'' in the LOF, are used to classify fisheries in the absence of reliable data on the frequency of interactions.

How does NMFS determine which species or stocks are included as incidentally killed or injured in a fishery?

The LOF includes a list of marine mammal species or stocks incidentally killed or injured in each commercial fishery. To determine which species or stocks are included as incidentally killed or injured in a fishery, NMFS annually reviews the information presented in the current SARs. The SARs are based upon the best available scientific information and provide the most current and inclusive information on each stock's PBR level and level of interaction with commercial fishing operations. NMFS also reviews other sources of new information, including observer data, stranding data, fisher self-reports, and anecdotal reports.

In the absence of reliable information on the level of mortality or injury of a marine mammal stock, or insufficient observer data, NMFS will determine whether a species or stock should be added to, or deleted from, the list by considering other factors such as: changes in gear used, increases or decreases in fishing effort, increases or decreases in the level of observer coverage, and/or changes in fishery management that are expected to lead to decreases in interactions with a given marine mammal stock (such as a TRP or a fishery management plan (FMP)). NMFS will provide case-specific justification in the LOF for changes to the list of species or stocks incidentally killed or injured.

How does NMFS determine the levels of observer coverage in a fishery on the LOF?

Data obtained from the observer program and the observer coverage levels in a particular fishery are important tools in estimating the level of annual marine mammal mortality and serious injury in commercial fishing operations. The best available information on the level of observer coverage, and the spatial and temporal distribution of observed marine mammal interactions, is presented in the SARs. Starting with the 2005 SARs, each SAR includes an appendix with detailed descriptions of each Category I and II fishery on the LOF, including observer coverage in those fisheries. The SARs generally do not provide detailed information on observer coverage in Category III fisheries because, under the MMPA, Category III fisheries are not required to accommodate observers aboard vessels due to the remote likelihood of mortality and serious injury of marine mammals. Fishery information presented in the SARs' appendices includes: level of observer coverage, target species, levels of fishing effort, spatial and temporal distribution of fishing effort, characteristics of fishing gear and operations, management and regulations, and interactions with marine mammals. Copies of the SARs are available on the NMFS Office of Protected Resources' Web site at: *http://www.nmfs.noaa.gov/pr/sars/.* Information on observer coverage levels in Category I and II fisheries can also be found in the Category I and II fishery fact sheets on the NMFS Office of Protected Resources Web site: *http://www.nmfs.noaa.gov/pr/interactions/lof/.* Additional information on observer programs in commercial fisheries can be found on the NMFS National Observer Program's Web site: *http://www.st.nmfs.gov/st4/nop/.*

How do I find out if a specific fishery is in category I, II, or III?

This final rule includes three tables that list all U.S. commercial fisheries by LOF Category. Table 1 lists all of the commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists all of the commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; and Table 3 lists all U.S.-authorized commercial fisheries on the high seas. A fourth table, Table 4, lists all commercial fisheries managed under applicable TRPs or take reduction teams (TRT).

Are high seas fisheries included on the LOF?

NMFS includes high seas fisheries in Table 3 of the LOF, along with the number of valid High Seas Fishing Compliance Act (HSFCA) permits in each fishery. As of 2004, NMFS issues HSFCA permits only for high seas fisheries analyzed in accordance with the National Environmental Policy Act (NEPA) and the Endangered Species Act (ESA). The authorized high seas fisheries are broad in scope and encompass multiple specific fisheries identified by gear type. For the purposes of the LOF, the high seas fisheries are

subdivided based on gear type (*e.g.,* trawl, longline, purse seine, gillnet, troll, *etc.*) to provide more detail on composition of effort within these fisheries. Many fisheries operate in both U.S. waters and on the high seas, creating some overlap between the fisheries listed in Tables 1 and 2 and those in Table 3. In these cases, the high seas component of the fishery is not considered a separate fishery, but an extension of a fishery operating within U.S. waters (listed in Table 1 or 2). NMFS designates those fisheries in Tables 1, 2, and 3 by a ''*'' after the fishery's name. The number of HSFCA permits listed in Table 3 for the high seas components of these fisheries operating in U.S. waters does not necessarily represent additional effort that is not accounted for in Tables 1 and 2. Many vessels/participants holding HSFCA permits also fish within U.S. waters and are included in the number of vessels and participants operating within those fisheries in Tables 1 and 2.

HSFCA permits are valid for five years, during which time FMPs can change. Therefore, some vessels/participants may possess valid HSFCA permits without the ability to fish under the permit because it was issued for a gear type that is no longer authorized under the most current FMP. For this reason, the number of HSFCA permits displayed in Table 3 is likely higher than the actual U.S. fishing effort on the high seas. For more information on how NMFS classifies high seas fisheries on the LOF, see the preamble text in the final 2009 LOF (73 FR 73032; December 1, 2008).

Where can I find specific information on fisheries listed on the LOF?

NMFS maintains summary documents, or fishery fact sheets, for each Category I and II fishery on the LOF. These fishery fact sheets provide the full history of each Category I and II fishery, including: when the fishery was added to the LOF, the basis for the fishery's initial classification, classification changes to the fishery, changes to the list of species or stocks incidentally killed or injured in the fishery, fishery gear and methods used, observer coverage levels, fishery management and regulation, and applicable TRPs or TRTs, if any. These fishery fact sheets are updated after each final LOF and can be found under ''How Do I Find Out if a Specific Fishery is in Category I, II, or III?'' on the NMFS Office of Protected Resources' Web site: *http://www.nmfs.noaa.gov/pr/interactions/lof/,* linked to the ''List of Fisheries by Year'' table. NMFS is developing similar fishery fact sheets for each Category III fishery on the LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, the development of these fishery fact sheets will take significant time to complete. NMFS anticipates posting the Category III fishery fact sheets along with the final 2013 LOF, although this timeline may be revised as this exercise progresses.

Am I required to register under the MMPA?

Owners of vessels or gear engaging in a Category I or II fishery are required under the MMPA (16 U.S.C. 1387(c)(2)), as described in 50 CFR 229.4, to register with NMFS and obtain a marine mammal authorization to lawfully take non-endangered and non-threatened marine mammals incidental to commercial fishing operations. Owners of vessels or gear engaged in a Category III fishery are not required to register with NMFS or obtain a marine mammal authorization.

How do I register and receive my authorization certificate and injury/mortality reporting forms?

NMFS has integrated the MMPA registration process, implemented through the Marine Mammal Authorization Program (MMAP), with existing state and Federal fishery license, registration, or permit systems for Category I and II fisheries on the LOF. Participants in these fisheries are automatically registered under the MMAP and are not required to submit registration or renewal materials directly under the MMAP.

In the Southwest, Northwest, and Alaska regions, NMFS will issue vessel or gear owners an authorization certificate and/or injury/mortality reporting forms via U.S. mail or with their state or Federal license at the time of renewal.

In the Pacific Islands region, NMFS will issue vessel or gear owners who hold a Federal permit an authorization certificate and/or injury/mortality reporting forms via U.S. mail or with their Federal permit at the time of renewal; for vessel or gear owners holding state licenses only, NMFS will issue an authorization certificate via U.S. mail automatically at the beginning of each calendar year. Individuals participating in Category I or II fisheries who obtain state commercial marine licenses after the beginning of the calendar year may request an authorization certificate and/or injury/mortality reporting forms by contacting the NMFS Pacific Islands Regional Office at (808) 944–2200.

In the Northeast region, NMFS will issue vessel or gear owners an authorization certificate via U.S. mail automatically at the beginning of each calendar year; but vessel or gear owners must request or print injury/mortality reporting forms by contacting the NMFS Northeast Regional Office at (978) 281–9328 or by visiting the Northeast Regional Office Web site (*http://www.nero.noaa.gov/*).

In the Southeast region, NMFS will issue vessel or gear owners notification of registry and vessel or gear owners may receive their authorization certificate and/or injury/mortality reporting form by contacting the Southeast Regional Office at (727) 209–5952 or by visiting the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/pr/mm/mmap.htm*) and following the instructions for printing the necessary documents.

The authorization certificate, or a copy, must be on board the vessel while it is operating in a Category I or II fishery, or for non-vessel fisheries, in the possession of the person in charge of the fishing operation (50 CFR 229.4(e)). Although efforts are made to limit the issuance of authorization certificates to only those vessel or gear owners that participate in Category I or II fisheries, not all state and Federal permit systems distinguish between fisheries as classified by the LOF. Therefore, some vessel or gear owners in Category III fisheries may receive authorization certificates even though they are not required for Category III fisheries. Individuals fishing in Category I and II fisheries for which no state or Federal permit is required must register with NMFS by contacting their appropriate Regional Office (see **ADDRESSES**).

How do I renew my registration under the MMPA?

In Pacific Islands, Southwest, Alaska or Northeast regional fisheries, registrations of vessel or gear owners are automatically renewed and participants should receive an authorization certificate by January 1 of each new year. In Northwest regional fisheries, vessel or gear owners receive authorization with each renewed state fishing license, the timing of which varies based on target species. Vessel or gear owners who participate in these regions and have not received authorization certificates by January 1 or with renewed fishing licenses must contact the appropriate NMFS Regional Office (see **ADDRESSES**).

In Southeast regional fisheries, vessel or gear owners may receive an authorization certificate by contacting the Southeast Regional Office or visiting the Southeast Regional Office Web site (*http://sero.nmfs.noaa.gov/pr/mm/mmap.htm*) and following the instructions for printing the necessary documents.

Am I required to submit reports when I injure or kill a marine mammal during the course of commercial fishing operations?

In accordance with the MMPA (16 U.S.C. 1387(e)) and 50 CFR 229.6, any vessel owner or operator, or gear owner or operator (in the case of non-vessel fisheries), participating in a fishery listed on the LOF must report to NMFS all incidental injuries and mortalities of marine mammals that occur during commercial fishing operations, regardless of the category in which the fishery is placed (I, II or III) within 48 hours of the end of the fishing trip. 50 CFR 229.2 defines an injury as ''a wound or other physical harm,'' and includes examples of signs of injury. In addition, any animal that ingests fishing gear or any animal that is released with fishing gear entangling, trailing, or perforating any part of the body is considered injured, regardless of the presence of any wound or other evidence of injury, and must be reported. Injury/mortality reporting forms and instructions for submitting forms to NMFS can be downloaded from: *http://www.nmfs.noaa.gov/pr/pdfs/interactions/mmap_reporting_form.pdf* or by contacting the appropriate Regional office (see **ADDRESSES**). Reporting requirements and procedures can be found in 50 CFR 229.6.

Am I required to take an observer aboard my vessel?

Individuals participating in a Category I or II fishery are required to accommodate an observer aboard their vessel(s) upon request from NMFS. MMPA section 118 (16 U.S.C. 1387) states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe; thereby, exempting vessels too small to accommodate an observer from this requirement. However, observer requirements will not be exempted, regardless of vessel size, for U.S. Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline vessels operating in special areas designated by the Pelagic Longline Take Reduction Plan implementing regulations (50 CFR 229.36(d)). Observer requirements can be found in 50 CFR 229.7.

Am I required to comply with any marine mammal take reduction plan regulations?

Table 4 in this final rule provides a list of fisheries affected by TRPs and TRTs. TRP regulations can be found at 50 CFR 229.30 through 229.36. A description of each TRT and copies of each TRP can be found at: *http://www.nmfs.noaa.gov/pr/interactions/trt/*.

Sources of Information Reviewed for the Final 2012 LOF

NMFS reviewed the marine mammal incidental injury, serious injury and mortality information presented in the SARs for all fisheries. The SARs are based on the best scientific information available at the time of preparation, including the level of serious injury and mortality of marine mammals that occurs incidental to commercial fishery operations and the PBR levels of marine mammal stocks. The information contained in the SARs is reviewed by regional Scientific Review Groups (SRGs) representing Alaska, the Pacific (including Hawaii), and the U.S. Atlantic, Gulf of Mexico, and Caribbean. The SRGs were created by the MMPA to review the science that informs the SARs, and to advise NMFS on marine mammal population status, trends, and stock structure, uncertainties in the science, research needs, and other issues.

NMFS also reviewed other sources of new information, including marine mammal stranding data, observer program data, fisher self-reports, reports to the SRGs, conference papers, anecdotal reports, FMPs, and ESA documents.

The final LOF for 2012 was based on information provided in the NEPA and ESA documents analyzing authorized high seas fisheries; stranding data; fishermen self-reports through the MMAP; observer program reports; anecdotal reports; and the final SARs for 1996 (63 FR 60, January 2, 1998), 2001 (67 FR 10671, March 8, 2002), 2002 (68 FR 17920, April 14, 2003), 2003 (69 FR 54262, September 8, 2004), 2004 (70 FR 35397, June 20, 2005), 2005 (71 FR 26340, May 4, 2006), 2006 (72 FR 12774, March 19, 2007), 2007 (73 FR 21111, April 18, 2008), 2008 (74 FR 19530, April 29, 2009), 2009 (75 FR 12498, March 16, 2010), and 2010 (76 FR 34054, June 10, 2011). The SARs are available at: *http://www.nmfs.noaa.gov/pr/sars/*.

Fishery Descriptions

Beginning with the final 2008 LOF (72 FR 66048, November 27, 2007), NMFS describes each Category I and II fishery on the LOF. Below, NMFS describes the fisheries classified as Category I or II on the 2012 LOF that were not classified as such on a previous LOF (and therefore have not yet been defined on the LOF). Additional details for Category I and II fisheries operating in U.S. waters are included in the SARs, FMPs, and TRPs, through state agencies, or through the fishery fact sheets available on the NMFS Office of Protected Resources Web site (*http://www.nmfs.noaa.gov/pr/interactions/lof/).* Additional details for Category I and II fisheries operating on the high seas are included in various FMPs, NEPA, or ESA documents.

State and regional abbreviations used in the following text include: AK (Alaska), BSAI (Bering Sea, Aleutian Islands), CA (California), DE (Delaware), FL (Florida), GMX (Gulf of Mexico), HI (Hawaii), MA (Massachusetts), ME (Maine), MHI (Main Hawaiian Islands), NC (North Carolina), NY (New York), OR (Oregon), RI (Rhode Island), SC (South Carolina), VA (Virginia), WA (Washington), and WNA (Western North Atlantic).

Southeastern U.S. Atlantic, Gulf of Mexico Stone Crab Trap/Pot Fishery

The ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery operates primarily nearshore in the State of FL. Stone crab fishing outside of this area is likely very minimal. In 2010, the State of FL issued 1,282 commercial stone crab licenses and 1,190,285 stone crab trap tags. FL state regulations limit recreational stone crab trap/pot numbers to five per person (FL Administrative Code (F.A.C.) Chapter 68B–13). The season for commercial and recreational stone crab harvest is from October 15 to May 15. Traps are the most typical gear type used for the commercial and recreational stone crab fishery. Commercial traps must be designed to conform to the specifications established under U.S. 50 CFR 654.22, as well as F.A.C. Chapter 68B–13. Baited traps are frequently set in waters of 65 ft (19.8 m) depth or less in a double line formation, generally 100–300 ft (30.5–91.4 m) apart, running parallel to a bottom contour. The margins of seagrass flats and bottoms with low rocky relief are also favored areas for trap placement. Buoys are attached to the trap/pot via float line. In FL, commercial trap/pot buoys are required to be marked with the letter ''X,'' the trap owner's stone crab endorsement number (in characters at

least 2 inches high), and a tag that corresponds to a valid FWC-issued trap certificate. Recreational trap/pot buoys, except those fished from a dock, must have a permanently affixed and legible ''R'' at least 2 inches high and the harvester's name and address (Ch. 68B–13.009(3), F.A.C).

Comments and Responses

NMFS received 19 comment letters on the proposed 2012 LOF (76 FR 37716, June 28, 2011). Comments were received from the Blue Water Fishermen's Association, Center for Biological Diversity, Florida Fish and Wildlife Conservation Commission, Florida Keys Commercial Fishermen's Association, Freezer Longline Coalition, Garden State Seafood Association, Hawaii Longline Association, Humane Society of the United States, Marine Mammal Commission, Natural Resources Defense Council, State of Hawaii, U.S. Fish and Wildlife Service, Western Pacific Regional Fishery Management Council, and 6 individuals. Comments on issues outside the scope of the LOF were noted, but are generally not responded to in this final rule.

General Comments

Comment 1: An individual commenter recommends NMFS inform the U.S. Department of Defense (DOD) of the LOF, NMFS, and MMPA. The commenter further wondered whether the Navy is also a contributor of injury or death of animals listed on the LOF, if the process is complying with Advisory Council on Historic Preservation Section 106, and, if so, which Native Hawaiian Organizations are involved.

Response: Certain military readiness activities are subject to sections 101(a)(5)(A) and (D) of the MMPA, which authorizes the Secretary of Commerce to allow, upon request, the incidental, but not intentional taking of marine mammals subject to required notifications and determinations. However, the Navy is not subject to section 118 of the MMPA, which applies to commercial fisheries. National Historic Preservation Act (NHPA) section 106 generally requires federal agencies to consult the appropriate State Historic Preservation Office (SHPO) and/or Tribal or Native Hawaiian groups on undertakings, including projects, activities, and programs that may affect qualifying historic properties. The LOF only involves classification determinations for commercial fisheries based upon marine mammal interactions, and is not a federal undertaking under the NHPA.

Comment 2: The Marine Mammal Commission (Commission) acknowledges NMFS' efforts for summarizing and providing information about observer coverage and other characteristics of listed fisheries, and commends NMFS for its efforts to centralize information used to classify Category III fisheries and looks forward to seeing this effort come to fruition. The Commission appreciates that NMFS has considered their concerns and is exploring ways to fully and effectively convey the reasons for listing fisheries, which must be based on the best available information and may or may not include observer-derived data.

Response: NMFS agrees that summarizing the information used as the basis to classify each fishery on the LOF in one location could be useful for interested readers. NMFS has posted information on each Category I and II fishery on the LOF on the NMFS Office of Protected Resources Web site, where it can be considered at the readers' discretion, and is pleased the Commission finds the information useful while reviewing the LOF. NMFS is developing similar fishery fact sheets for each Category III fishery and anticipates posting those fishery fact sheets along with the final 2013 LOF. However, due to the large number of Category III fisheries on the LOF and the lack of accessible and detailed information on many of these fisheries, this timeline may be revised as this exercise progresses.

Comment 3: The Center for Biological Diversity (CBD) notes that the proposed 2012 LOF once again includes aquaculture operations as Category III fisheries and reiterates comments on past LOFs that aquaculture facilities are not ''commercial fishing operations'' eligible for the take authorization contained in Section 118 of the MMPA. The CBD states that these operations consistently compete with marine mammals for habitat and resources due to their stationary nature; therefore, aquaculture facilities and activities are more appropriately subject to the take prohibitions and permitting regimes contained in Section 101 of the MMPA.

Response: NMFS received similar comments on the 2009 and 2010 LOFs. Section 118 of the MMPA governs the ''taking of marine mammals incidental to commercial fishing operations.'' The MMPA does not provide a definition of a commercial fishing operation; therefore, NMFS defined ''commercial fishing operation'' in regulations at 50 CFR 229.2. The definition was presented in the proposed and final rules implementing the regulations for section 118 of the MMPA (60 FR 31666, June 16, 1995; 60 FR 65086, August 30, 1995). As noted in those proposed and final rules, and in the responses to comments on the 2009 and 2010 LOFs (73 FR 73032, December 1, 2008, comment/response 5; 74 FR 58859, November 16, 2009, comment/response 11), the definition of a ''commercial fishing operation'' includes aquaculture. The regulations in 50 CFR 229.2 define a ''commercial fishing operation'' as ''the catching, taking, or harvesting of fish from the marine environment * * *. The term includes * * * aquaculture activities.'' Further, ''fishing or to fish'' is defined as ''any commercial fishing operation.'' Therefore, aquaculture fisheries are considered commercial fisheries that are managed under section 118 of the MMPA and are therefore included on the annual LOF.

Comment 4: The CBD urges NMFS not to reclassify fisheries to a less serious category when information on the fishery and its interactions with marine mammals is scant. In these cases, the CBD urges NMFS to instead rely more heavily upon the known impacts of the fishery's gear and the marine mammals known to inhabit the area being fished, rather than relying, for example, on the lack of reported interactions in fisheries with little or no observer coverage. The CBD states that every Federal FMP by law must include ''a standardized reporting methodology to assess the amount and type of bycatch,'' and that the ESA and MMPA make no exceptions to protection on the basis of state versus Federal fisheries. The CBD asserts that failure to assess marine mammal bycatch is an unacceptable justification for denying marine mammals protection via the LOF.

Response: NMFS considers a broad range of information when proposing or making fishery classification decisions on the LOF, and does not classify fisheries based solely on the presence or absence of serious injuries or mortalities obtained through observer programs. Under regulations pursuant to section 118, NMFS uses observer data, logbook data, stranding data, fishers' reports, anecdotal reports, qualitative factors outlined in 50 CFR 229.2 (*i.e.,* fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area), information on incidental serious injury or mortality to marine mammals reported in SARs (50 CFR 229.2; 60 FR 45086, August 30, 1995; 60 FR 67063, December 28, 1995), and input received during the public comment periods.

NMFS considers all of the information to determine whether the fishery can be classified on the LOF based on quantitative information analyzed through the Tier 1 and 2 analyses; or whether the fishery can be classified on the LOF based on the qualitative information outlined in NMFS regulations at 50 CFR 229.2 (and presented above).

Comments on Commercial Fisheries in the Pacific Ocean

Comment 5: The Freezer Longline Coalition (FLC) recommends the ''BSAI Pacific cod longline'' fishery be reclassified as Category III because the annual serious injury and mortality for all stocks listed as killed or injured in this fishery is less than 1 percent of PBR for the most recent five-year period (2004–2008). The FLC states that the 2010 SAR shows that there are no serious injuries or mortalities of killer whales (AK resident stock) or ribbon seals from 2004–2008, and the mean annual serious injury and mortality of Steller sea lions (Western distinct population segment) is 0.488 percent of PBR; however, the fishery continues to be classified as Category II based on serious injury and mortality of resident killers whales from 2002–2006. The FLC asserts that the fishery should not continue to be classified based on outdated data simply because NMFS has been unable to ''finalize'' data for 2007 and 2008, which is inconsistent with the MMPA's best available science mandate, the Information Quality Act, and NMFS' associated guidelines.

Response: The classification of fisheries for the proposed 2012 LOF was based on the best available scientific information at the time the fishery classifications were made. In this case, the most current available information on serious injury and mortality of marine mammals was presented in the final 2010 SAR, which included an analysis data from 2002–2006. More recent data from a new analysis for the 2007–2010 period will be available for use in classifying fisheries on the 2013 LOF. At that time, NMFS will consider the information available from the new analysis and consider a reclassification for the BSAI Pacific cod longline fishery, if appropriate.

Comment 6: The FLC asserts that the estimated mortality reported in the SARs for AK longline fisheries uses incorrect observer coverage percentages, resulting in significant overestimation of mortality. The FLC further asserts that the default recovery factors used for multiple AK marine mammal stocks need to be re-evaluated for populations that are increasing, have a large population, or whose population status is known.

Response: NMFS does not calculate observer percentages or recovery factors in the annual LOF, instead this information is provided in the SARs after NMFS and the Alaska SRG have evaluated the information during their annual review. Therefore, NMFS suggests the FLC submit this comment during the public comment period for the draft 2011 SARs. Further, NMFS responded to similar comments on the 2009 SARs and therefore refers the FLC to that **Federal Register** notice for additional information (75 FR 12498, March 16, 2010; comment/response 13 and 16).

Comment 7: The Commission concurs that the ''CA thresher shark/swordfish drift gillnet'' fishery meets the criteria for Category II and concurs with the designation of the CA/OR/WA stock of humpback whales as the basis for that classification.

Response: NMFS acknowledges this comment. The ''CA thresher shark/swordfish drift gillnet'' fishery is classified as Category II in this final rule.

Comment 8: The Humane Society of the United States (HSUS) supports the elevation of the ''CA thresher shark/swordfish drift gillnet'' fishery to Category II. The HSUS notes that there is a long-standing record of interactions between drift gillnet fisheries and protected species worldwide and feels it is appropriate for NMFS to develop a better understanding of this driftnet fishery and the extent to which it interacts with marine mammals through use of observer coverage, which is more likely for a fishery placed in Category II.

Response: NMFS acknowledges this comment and notes that this fishery is subject to requirements under the Pacific Offshore Cetacean Take Reduction Plan and is regulated under the Fishery Management Plan for U.S. West Coast Fisheries for Highly Migratory Species, which authorizes NOAA to place observers on fishing vessels in west coast highly migratory species fisheries (such as drift gillnet), regardless of the LOF category.

Comment 9: The U.S. Fish and Wildlife Service (USFWS) reiterated a recommendation made on the 2011 LOF to include southern sea otters on the list of species/stocks killed or injured in the Category III ''CA spiny lobster trap'' or the ''CA coonstripe shrimp, rock crab, tanner crab pot or trap'' fisheries because experiments have shown that sea otters can enter these traps and drown. The USFWS provided a publication by Hatfield *et al.* (2011) to support this recommendation.

Response: NMFS responded to a similar comment on the 2011 LOF (75 FR 68475, November 8, 2010, comment/response 13) and provided detailed information on an extensive review of marine mammal interactions with West Coast trap and pot gear in the proposed 2009 LOF (73 FR 33760, June 13, 2008). In 2008, NMFS Southwest Regional Office (SWRO) consulted with experts on marine mammals and pot/trap fisheries including the NMFS Southwest Fisheries Science Center, NMFS Northwest Fisheries Science Center, NMFS Northwest Regional Office, and CA Department of Fish and Game (CDFG) to evaluate which fisheries may be affecting marine mammals. The primary intent of the analysis was to review interactions between trap/pot gear and humpback whales, but all marine mammals were addressed in the review. During the 2008 review, the only information available on southern sea otter interactions with trap/pot gear were stranding records of from 1987 and 1991 (2008 SAR; pers. comm. with staff from CDFG). At that time, NMFS determined that sea otters should be removed from the list of species killed or injured in the ''CA spiny lobster trap'' and the ''CA coonstripe shrimp, rock crab, tanner crab pot or trap'' fisheries because the information was approximately 20 years old and there had been no indications of interactions since that time. NMFS SWRO continues to consult with NMFS and CDFG specialists regarding marine mammal interactions with trap/pot gear. NMFS has not received additional information since 2008 to suggest that southern sea otters are currently being incidentally killed or injured in pot and trap gear.

As part of their public comment, the USFWS submitted a paper by Hatfield *et al.* (2011), detailing experiments that indicate sea otters can enter and become entrapped in traps with openings of certain sizes. However, this paper presented no evidence of such takes occurring during commercial fishing activities off CA. The possibility of an interaction is insufficient justification to include southern sea otters on the list of species incidentally injured or killed in the ''CA spiny lobster trap'' or the ''CA coonstripe shrimp, rock crab, tanner crab pot or trap'' fisheries. Instead, NMFS needs some indication that takes are occurring or have occurred in these fisheries in recent years (*e.g.,* fisher self reports, observer data, stranding data). If additional information becomes available to indicate that southern sea otters have been injured or killed in CA trap/pot fisheries in recent years, NMFS

will consider including this species on the LOF at that time.

Comment 10: The Hawaii Longline Association (HLA) believes that the abundance estimate for the false killer whale (pelagic stock) is not scientifically sound and, because the survey data used for that abundance estimate was collected in 2002, that NMFS is using data it knows to be stale to make LOF determinations for the 2012 LOF (as defined by NMFS guidelines). The HLA views these errors to be particularly acute because NMFS completed a new marine mammal survey in the Hawaiian EEZ in 2010; however, this current, available data are not the data upon which the proposed 2012 LOF is based. Therefore, the HLA asserts that if the 2012 LOF is issued as proposed (*i.e.,* not based on the 2010 data), it would violate the MMPA's ''best available science'' mandate.

Response: NMFS used the best available science in preparing the 2012 LOF. Proposed changes to the 2012 LOF were developed in spring and summer 2011, and were largely based on the draft and final 2010 SARs, which were the most recent SARs available. NMFS conducted a new cetacean assessment survey in the U.S. EEZ around the Hawaiian Islands (HICEAS II) in August–December 2010, with the goal of updating abundance estimates for all Hawaiian cetaceans. The survey data are currently being analyzed, and abundance estimates and PBR calculations based on the data are not yet available. Preliminary estimates of abundance based on the visual sightings data will be included in the draft 2012 SAR, which is expected to be published and available for public review and comment in spring 2013. The acoustic and other data collected during the survey will take longer to analyze, and abundance estimates will likely be revised in future SARs to incorporate the new analysis. The currently available data and estimates still constitute the best available information within existing NMFS parameters and therefore are appropriately included in the final 2010 SARs, draft 2011 SARs, and the 2012 LOF.

Comment 11: The Western Pacific Fishery Management Council (Council) and the HLA both recommend that the ''HI shallow-set (swordfish target) longline/set line'' fishery be classified as a Category III. The Council and the HLA note that this fishery is classified as Category II based on one serious injury of a bottlenose dolphin (HI stock) within the HI EEZ. The commenters note that the only other fishery to have incidental serious injury or mortality of this stock is the ''HI deep-set (tuna target) longline/set line'' fishery, and the combined serious injury and mortality rate for these two fisheries is less than 10 percent of PBR. The Council and HLA further note that the analysis for fishery classification places all fisheries interacting with a stock in Category III if the total interaction rate is equal to or less than 10 percent of the PBR unless a fishery qualifies for another Category for a different stock; however, no other marine mammal stock qualifies the HI shallow-set fishery for Category I or II.

Response: NMFS concurs that, based on the marine mammal interactions within the U.S. EEZ reported in the final 2010 SAR, the shallow-set longline fishery would meet the definition of a Category III fishery. There are no marine mammal stocks within the EEZ that have mortality and serious injury that exceed 10 percent of PBR across all fisheries and that individually exceed 1 percent of PBR in the shallow-set fishery. However, there are documented injuries and mortalities of numerous species and stocks of marine mammals by the shallow-set longline fishery on the high seas, which are listed in Table 3 for the high seas component of the shallow-set longline fishery (''Western Pacific Pelagic (HI Shallow-set component)''). Because there currently are no abundance estimates or PBRs available for most of these marine mammal stocks on the high seas, quantitative comparison of mortality and serious injury against PBR is currently not possible.

MMPA regulations (50 CFR 229.2) provide that in the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals by a commercial fishery, NMFS will determine whether the incidental serious injury or mortality is ''occasional'' by evaluating other factors such as fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator. HI-based shallow-set fishing vessels operating within the U.S. EEZ and on the high seas employ the same vessels, the same fishing methods and gear, target the same fish stocks, and employ the same marine mammal mitigation and deterrence measures. A review of NMFS observer data indicates that approximately 7 percent of shallow-set trips from 2004–2008 had marine mammal interactions, including interactions with Bryde's whale, Risso's dolphin, humpback whale, striped dolphin, bottlenose dolphin, and Kogia sp. whale (pygmy or dwarf sperm whale). The number and rate of marine mammal interactions increased each year in that 5-year timeframe. Of the 22 total marine mammal interactions observed on 325 shallow-set trips from 2004–2008, 19 were taken on the high seas. Seventeen of the total 22 observed interactions resulted in mortality or serious injury, 16 of which occurred on the high seas (Forney, 2010; NMFS Pacific Islands Regional Observer Program, 2004–2008). Although NMFS is currently unable to quantitatively establish the impact of these interactions on high seas marine mammal stocks because of the lack of population information, these interactions do provide qualitative evidence that the shallow-set fishery continues to have ''occasional'' interactions with marine mammals and should remain a Category II commercial fishery.

As noted in the preamble of the proposed 2012 LOF and the response to a comment in the final 2010 LOF (74 FR 58859, November 16, 2009; comment/response 17) regarding high seas fisheries classification, the high seas portion of the shallow-set longline fishery is an extension of the fishery operating within U.S. waters, and is not a separate fishery. A fishery is classified on the LOF as its highest level of classification (*e.g.*, a fishery qualifying for Category II for one marine mammal stock and Category III for another marine mammal stock will be listed as Category II). Because the ''Western Pacific Pelagic (HI Shallow-set component)'' and ''HI shallow-set (swordfish target) longline/set line'' are two components of the same fishery, both components are classified as Category II.

The Category II classification is further supported by data in the draft 2011 SAR, which was not available when the proposed 2012 LOF was drafted. The draft 2011 SAR reports an observed serious injury to a false killer whale in the shallow-set fishery within the U.S. EEZ in 2009. Based on one observed non-serious injury in 2008 and one observed serious injury in 2009, the shallow-set fishery has an average annual mortality and serious injury rate of 0.2 HI pelagic false killer whales per year within the EEZ. This represents approximately 8 percent of the stock's PBR level, which also qualifies it as a Category II fishery.

Comment 12: The HLA disagrees with the addition of the insular stock of false killer whales to the list of stocks incidentally injured or killed in the ''HI deep-set (tuna target) longline/set line'' fishery because the inclusion is based

on NMFS' proration of an isolated non-serious interaction between this fishery's insular stock and pelagic stock interaction rate, which is not based on the best available science. The HLA asserts that this fishery has never been observed to interact with the insular stock and that the interaction in question occurred in an area where no member of the insular stock has ever been observed in or near, and that NMFS has no genetic evidence showing that the deep-set fishery has ever interacted with a member of the insular stock. The HLA also disagrees with NMFS' extension of the 140 km insular stock ''range'' uniformly around the MHI based on a single tagged animal over 100 km to the south of the MHI.

Response: NMFS determines which species or stocks are included as incidentally killed or injured in a fishery by annually reviewing the information presented in the current SARs, among other relevant sources. The SARs are based on the best available scientific information and provide the most current and inclusive information on each stock, including range, abundance, PBR level, and level of interaction with commercial fishing operations. The LOF does not analyze or evaluate the SARs. The commenter questions the validity of the data and calculations contained within the SAR for false killer whales; and, thus, NMFS encourages the commenter to submit this comment during the public comment period for the draft SAR.

The draft 2011 SAR for false killer whales indicates an average of 0.6 mortalities or serious injuries of HI insular false killer whales per year incidental to the HI-based deep-set longline fishery. One non-serious injury to a false killer whale was observed within the overlap zone between the HI insular and HI pelagic stocks of false killer whales. In the SAR, all estimated takes, and observed takes for which an injury severity determination could not be made, were prorated based on the proportions of observed interactions that resulted in death or serious injury, or non-serious injury between 2000–2009. Further, takes of false killer whales of unknown stock origin within the insular/pelagic stock overlap zone were prorated assuming that the density of the insular stock declines and the density of the pelagic stock increases with increasing distance from shore. No genetic samples are available to establish stock identity for these takes, but both stocks are considered at risk of interacting with longline gear within this region.

Additionally, the draft 2011 SAR reports that from 2005–2009, eight unidentified cetaceans, known to be either false killer whales or short-finned pilot whales (together termed ''blackfish'') were seriously injured in the deep-set longline fishery within U.S. EEZ waters, two of which were taken within the insular stock range. The draft 2011 SAR prorates blackfish to each species and stock based on their distance from shore (see McCracken, 2010 for details on the distance-from-shore model).

For these reasons, NMFS is not changing its proposal to add the HI insular stock of false killer whales on the list of marine mammal stocks incidentally killed or injured in the HI deep-set longline fishery. For a more complete analysis of the methodology for determining mortality and serious injury of insular and pelagic false killer whales, the commenter is referred to the draft 2011 SAR.

Comment 13: The CBD recommends NMFS classify ''American Samoa longline'' fishery as Category I based on analogy to the ''HI deep-set (tuna target) longline/set line'' fishery, interactions with false killer whales, and interactions with rough-toothed dolphins, citing three arguments. First, CBD notes that NMFS has proposed to require longline hooks in this fishery are set at depths of 100 meters or deeper to reduce interactions with Pacific green sea turtles (76 FR 32929, June 7, 2011), which will make the gear and methods like the Category I Hawaii deep-set longline fishery. Second, CBD asserts that even though abundance estimates are unavailable for the American Samoa false killer whale stocks, the human-caused mortality falls within the range of likely PBRs for both of these marine mammal stocks and the 2010 SAR concludes that the false killer whales in American Samoa would probably be strategic if abundance estimates were available. Lastly, CBD notes that this fishery also interacts with the American Samoa stock of rough-toothed dolphins, for which the 2010 SAR indicates the estimated rate of fisheries-related mortality or serious injury (3.6 dolphins per year) is within the range of likely PBRs (3.4–22).

Response: Abundance estimates for the American Samoa stocks of false killer whales and rough-toothed dolphins are unknown, and PBRs cannot be calculated. The final 2010 SARs present a plausible range of abundance estimates for each stock based on density estimates of the species in other areas of the Pacific, and calculate a range of likely PBRs using those ranges of abundance. The SARs further note that estimated mortality and serious injury of false killer whales exceeds the range of the stock's likely PBRs, and mortality and serious injury of rough-toothed dolphin falls within the range of the stock's likely PBRs. These estimates provide an indication that cetacean bycatch in the fishery is not insignificant. However, without an actual calculation of PBR, NMFS cannot accurately evaluate the effect of mortality and serious injury on the stocks to determine whether the fishery meets the definition of a Category I fishery. Under NMFS regulations, a Category I is one that cause frequent mortality or serious injury of marine mammals, which is defined as ''one that is by itself responsible for the annual removal of 50 percent or more of any stock's potential biological removal level'' (50 CFR 229.2). Only in the absence of reliable information indicating the frequency of incidental mortality and serious injury of marine mammals does NMFS consider other factors that may be used to classify the fishery as either Category II or III, including evaluation of fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator (50 CFR 229.2). Until quantitative information is available to allow a calculation of PBR, NMFS will retain the American Samoa longline fishery as Category II, by analogy to other longline fisheries.

Comment 14: The CBD recommended NMFS classify the ''HI vertical longline'' and ''HI kaka line'' fisheries as Category I based on serious injury and mortality of false killer whales (HI insular stock), which is proposed to be listed as endangered under the ESA (75 FR 70169, November 17, 2010). The CBD notes that the ESA scientific Biological Review Team (BRT) for this stock found a high level of current and future risk from interactions with troll, handline, shortline, and kaka line fisheries (Id. at 70180), and the BRT stated that although ''each of these fisheries is required by law under the MMPA to report interactions with marine mammals, the low number of reports strongly suggests that interactions are occurring and are not being reported'' (Id. at 70179). Lastly, the CBD asserts that a high level of anecdotal evidence, including fishermen that have reported shooting at false killer whales and a high rate of dorsal fin disfigurements consistent with injuries from unidentified fishing line, and the fact that the State of HI does not monitor

bycatch of marine mammals in any of its state fisheries, also suggest that the fisheries are having a greater impact than is reported. Therefore, the CBD asserts that the scientific information and opinion show that fisheries interactions present a high risk of extinction to the insular false killer whale, compelling NMFS to list these fisheries as Category I, especially in light of what appears to be deliberate efforts to obscure fishery mortality in order to prevent further protection for an endangered marine mammal.

Response: At this time, there is no quantitative information to support a Category I classification for either of these fisheries. As stated in the response to comment 13, a Category I fishery is one that NMFS determines has frequent incidental mortality and serious injury of marine mammals, defined as one that is, by itself, responsible for the annual removal of 50 percent or more of any stock's PBR level (50 CFR 229.2). NMFS considers other factors when determining whether a fishery meets the definition of a Category II or III fishery, including evaluation of fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator (50 CFR 229.2). Currently, NMFS does not have reliable information that either of these fisheries causes frequent incidental mortality and serious injury of marine mammals, such that would support classification of a Category I fishery, as that term is defined. Based on the currently available information, NMFS continues to believe that these two fisheries present a remote likelihood of interactions with marine mammals. NMFS is retaining these fisheries on the LOF as Category III fisheries but will consider any information that supports a reevaluation of the fisheries' classification in the future.

Comment 15: The CBD comments that the various fisheries that are known or suspected of interacting with Hawaiian monk seals should be classified as Category I because, given the critically endangered status of the monk seal, any interaction is significant. The CBD notes that fishery interactions are becoming more common (Baker *et al.,* 2011), yet all Hawaiian fisheries known or suspected of interactions with monk seals, such as the Hawaii lobster trap and the Hawaii tuna handline, are listed as Category III. Further, the CBD asserts that, while a PBR is not calculated for this stock (final 2010 SAR), any mortality from fisheries would qualify the fishery for Category I if a PBR was calculated.

Response: The LOF lists the Hawaiian monk seal on the list of species and stocks incidentally killed or injured in the Category III ''HI lobster trap'' and ''HI Main Hawaiian Islands (MHI) deep sea bottomfish handline'' fisheries. In the 2009 LOF, NMFS removed the Hawaiian monk seal from the list of species/stocks killed/injured in the ''HI tuna handline fishery,'' under which the stock had been listed since the 1996 LOF, because NMFS has never received a report of interactions between monk seals and tuna handline gear. The available information on Hawaiian monk seal interactions with the other two fisheries is:

(1) ''HI lobster trap'' fishery: There have not been any reported interactions since the mid-1980s, when one seal died in a trap; and

(2) ''HI Main Hawaiian Islands deep sea bottomfish handline fishery:'' A Federal observer program of the Northwestern Hawaiian Islands (NWHI) bottomfish handline fishery was conducted from the fourth quarter of 2003 through 2005, and no monk seal interactions were observed. The fishery has since been phased out as required under the Proclamation establishing the Papahanaumokuakea Marine National Monument. While fishing in the NWHI has been phased out, in previous years when commercial bottomfish boats were fishing in this area, NMFS received one self-reported incident (a hooking in 1994), and bottomfish hooks were observed in two seals at the French Frigate Shoals (one in 1982 and one in 1993). NMFS also had reports from the mid-1990s of seals stealing catch, seals being fed bait or non-target species by fishermen to discourage seals from taking catch, and some seals becoming hooked and cut free. The final 2010 SAR notes that no mortality or serious injuries have been attributed to the MHI deep sea bottomfish handline fishery.

While there have been no observed or reported interactions between monk seals and the ''HI lobster trap'' and ''HI Main Hawaiian Islands deep sea bottomfish handline'' fisheries in recent years, NMFS has retained Hawaiian monk seals as a species or stock incidentally killed or injured in these fisheries because monk seals in the MHIs are hooked and entangled but at a rate that has not been reliably assessed (final 2010 SAR). NMFS cannot confirm whether seals have been hooked on commercial or recreational gear, or a combination of both. However, NMFS consultations completed under the ESA section 7 found the MHI federal bottomfish fishery and the MHI federal lobster trap fishery were not likely to adversely affect Hawaiian monk seals (NMFS 2008a, 2008b). Finally, the PBR level for monk seals is currently ''undetermined,'' and NMFS is unable to make a quantitative evaluation of incidental mortality and serious injury compared to PBR. Due to the fact that the PBR level for monk seals is undetermined and the hooking and entanglement rate with commercial gear cannot be reliably assessed, NMFS will retain the ''HI lobster trap'' and ''HI Main Hawaiian Islands deep sea bottomfish handline'' fisheries as Category III fisheries on the LOF until more information becomes available to determine whether reclassification is warranted.

Comments on the Hawaii Troll and Charter Vessel Fisheries

NMFS received 10 comment letters addressing the proposed reclassification of the Hawaii trolling and charter vessel fisheries, four of which supported the proposal and six of which did not support the proposal. Generally, the comments focused on the following issues: (1) Concern regarding the use and quality of anecdotal reports of marine mammal interactions in the fisheries; (2) NMFS' use of quantitative versus qualitative information; (3) NMFS' estimation of commercial fishing effort ''fishing on'' dolphins; (4) the frequency of marine mammal interactions in the fisheries; (5) the severity of injuries sustained by marine mammals; (6) the PBR level for Pantropical spotted dolphins; (7) bait depredation by other dolphin species in these fisheries; (8) support for better understanding fishery interactions in HI and prioritization of a fishery observer program to better inform management; (9) the burden to the State of HI for mailing marine mammal Authorization Certificates to Category II fishery participants; and (10) the potential for the fisheries' elevation to lead to increased illegal fishing. Below, NMFS summarizes each comment received on the 2012 proposed LOF related to the HI troll and charter vessel fisheries and issues one response following the collective comments.

Comment 16: Three individual commenters, the Council, and the State of HI assert that NMFS should not use anecdotal reports of hookings as evidence or support for management decisions, given their lack of verification and details, nor should they be used to extrapolate mortality and serious injury to the entire fleet. An individual commenter notes that the use of such anecdotal reports does not

constitute objective and thorough science, and the Council suggests that NMFS develop a standard in using anecdotal reports in rulemaking to require verification and ensure decisions are based on the best available science. Further, the author of the newspaper article NMFS considered (Rizutto, 2007) commented that NMFS should not rely on his newspaper article for purposes of elevating the fisheries, that the instance described in the article was based on a third-hand account, and that he reported on this one instance because he believed it to be a rare event.

Comment 17: Four commenters address NMFS' use of quantitative versus qualitative data in drawing conclusions regarding the frequency of fishery interactions with spotted dolphins. The Council states that NMFS did not provide an upper limit of estimated mortality and serious injury, so there was not sufficient information to establish that collective fishery impacts exceeds 10 percent of PBR (Tier 1 analysis). Three commenters note the lack of quantitative data on the frequency of marine mammal interactions in the fisheries, and pointed to MMPA implementing regulations that instruct NMFS to evaluate other factors to determine the level of interactions when quantitative information is not available. The NRDC notes that the regulations also allow NMFS to consider other evidence at its own discretion. These three commenters concluded that the available qualitative data indicate a strong likelihood of occasional interactions, and the Commission stated that, until quantitative data are available on marine mammal takes from observer or other programs, the fisheries should be Category II.

Comment 18: Six commenters provide information on patterns of fishing effort in these fisheries. The Council, the State of HI, and two individual commenters suggest that NMFS overestimated the level of commercial fishing effort ''fishing on'' dolphins; *i.e.*, where vessels congregate on and deploy lines in close proximity to dolphins. The Council and two individual commenters assert that the majority of participants in these fisheries do not target tunas associated with, or fish within spotted dolphin pods, and an individual commenter noted that those who do, fish ''in front of'' not ''on'' dolphins, and that fishing around dolphins is only known to occur in two locations off the Big Island and Oahu. The State of HI noted that many commercial vessels fish part-time, and much of the effort is seasonal when there is a run of tuna. The State of HI also commented that many of those vessels observed trolling around dolphins may be non-commercial. The Council expresses concern that NMFS' account of Dr. Robin Baird's sightings rate of vessels ''fishing on'' spotted dolphins is skewed to produce a high result.

Dr. Baird asserts that his estimate of the percentage of spotted dolphin groups that had fishing vessels present is negatively biased (*i.e.*, is likely more than the percentage NMFS cites in proposed rule). He states that beginning in 2008, his research group began avoiding clusters of fishing vessels in their surveys to reduce the likelihood of encountering spotted dolphin groups at rates higher than would be expected given their presence in the area. As such, he states that in the last three years, he has been more likely to encounter groups that do not have fishing vessels present. Dr. Baird commented that observations of troll fishing vessels included up to eight vessels actively targeting dolphin pods, with multiples lines trailing hooks being trolled through the dolphins repeatedly. The Natural Resources Defense Council (NRDC) notes that this often occurred for several hours, at speeds up to 10 knots. The NRDC states that the degree of targeted fishing effort alone suggests the likelihood of incidental mortality or serious injury is not ''remote.''

Comment 19: The Council, the State of HI, the NRDC, and two individual commenters address the frequency of incidental interactions with Pantropical spotted dolphins in the HI troll and charter vessel fisheries. The Council, the State of HI and two individuals suggest that fishery interactions with Pantropical spotted dolphins are a rare event, the frequency is lower than NMFS estimated, and these fishery interactions are therefore not a conservation concern. One individual commenter cites experience fishing with these methods and never having hooked a dolphin, that they are not drawn to the lures or bait, and having only heard of one hooked dolphin that was hooked in the tail and released alive. The State of HI provides license and trip report data that indicate infrequent (0.25 percent of trips annually) reporting of catch lost to dolphin predation, and suggested the frequency at which dolphins are seriously injured fall below these percentages. The State of HI also states that NMFS applied assumptions that likely resulted in an overestimate of projected take levels.

The NRDC and an individual commenter suggest that interactions or the risk of interactions are likely higher than NMFS estimated, or at least do not qualify as ''remote.'' Dr. Baird describes his conversations with four HI fishermen, two of whom reported they had hooked spotted dolphins, and noted that spotted dolphins feed on flying fish near the surface during the day, increasing the potential for interactions with fishers. Finally, the NRDC states that the degree of targeted fishing effort alone suggests that the likelihood of incidental mortality and serious injury is not ''remote,'' which is required for a Category III fishery.

Comment 20: The Council and one individual commenter disagree with NMFS' determination that dolphins interacting with the troll and charter fisheries likely suffer serious injuries. One individual commenter notes that the reported dolphin was hooked in the mouth, was treated gently and cut loose without suffering the stress of being brought close to the boat. The Council asserts that NMFS ignored anecdotal information about dolphins surviving and recovering from these interactions, and that not all hookings result in the removal of the animal from the population. The Council also notes that the dolphins' injuries described in the proposed rule cannot be attributed to fishing vessels, and scarring shows that animals can survive and recover from such incidents.

Comment 21: The NRDC, the HSUS, and two individual commenters address the Pantropical spotted dolphin's PBR level. One individual commenter states that the PBR for the affected Pantropical spotted dolphin stock is underestimated. One individual commenter asserts that the abundance survey, the basis for the abundance estimate, was not designed to assess the dolphin population being impacted, evidenced by the low number of spotted dolphin sightings and the high CV. However, Dr. Baird says that the CV for the abundance estimate (upon which PBR is based) is the fifth lowest of all 18 species for which abundance was estimated from the 2002 survey, reflecting low density in Hawaiian waters. Dr. Baird, the NRDC, and the HSUS state that NMFS' SAR indicates the stock may be split into multiple island-associated stocks in the future pursuant to new genetic studies, so PBR, especially for the population around the Big Island where the largest share of charter fishing occurs, is likely to be smaller than the current PBR for the single defined stock.

Comment 22: The Council comments that NMFS ignored the information in a newspaper article (Rizzuto, 2007) regarding other dolphin species (rough-toothed and bottlenose) depredating on bait in these fisheries. The Council claims that NMFS has made selective

and arbitrary use of anecdotal information.

Comment 23: The HSUS comments that they were pleased to see a proposal for better understanding fishery interactions in Hawaii where marine mammal stock structure, abundance, and fishery interactions have long been ignored or accorded a lower priority than appropriate, and notes that the reclassification allows for a targeted observer program, which will provide data to better inform management.

Comment 24: The State of HI is concerned that since NMFS does not possess a database of commercial fishermen in HI, the proposed elevation of the ''HI charter vessel'' and ''HI trolling, rod and reel'' fisheries would place a significant administrative burden on the State for mailings of the MMAP authorization certificate to the more than 2,000 state-registered fishers. Further, the State of HI notes that it continually receives new applications for licenses during the year; however, NMFS only issues MMAP certificates at the beginning of the calendar year.

Comment 25: The State of HI states that NMFS must consider the potential for fishermen who are now licensed in the ''HI charter vessel'' and ''HI trolling, rod and reel'' fisheries to refuse to renew their Commercial Marine Licenses because of the requirements associated with participating in a Category II fishery, and if they continue to fish, may market their catch illegally. The State of HI asserts that this would reduce reportings to the State's licensing and reporting system, which NMFS relies on to manage fisheries.

Comment 26: The Council is concerned that NMFS apparently applies an arbitrary standard in determining fishery classifications and requests NMFS standardize any inconsistent analysis and determinations across regions. The Council observes that the proposed 2012 LOF includes seven Category III troll fisheries in the Pacific and several other Category III fisheries in the Atlantic that presumably include troll fisheries; however, the only proposed elevation to Category II is for the HI troll fishery. The Council argues that if gear type, fishing techniques, and anecdotal reports are sufficient to elevate one fishery to Category II, then all other troll fisheries in the Pacific and Atlantic, by the method of analogy, should also be analyzed for similar elevation. Further, the Council argues that where data and anecdotal reports of interactions (*e.g.*, depredation) are available for other fisheries, those fisheries should also be evaluated to determine whether they meet the criteria for Category II.

Response: NMFS proposed to elevate the ''HI trolling, rod and reel'' and ''HI charter vessel'' fisheries based on a suite of information, including NMFS reports, Western Pacific Regional Fishery Management Council reports, input from staff in the Pacific Islands Regional Office's Sustainable Fisheries Division, reports to the Pacific SRG, the SARs, consideration of the fishing gear and techniques of the fishery and the documented risk that they present to marine mammals, anecdotal reports from researchers, including researcher observations and researcher's discussions with fishermen, and information from a newspaper article (Rizzuto, 2007) (see 76 FR at 37720–37721, June 28, 2011). NMFS clarifies that the Agency does not rely exclusively on anecdotal reports of marine mammal interactions to support reclassifications of fisheries, but rather considers anecdotal information when it has been sufficiently corroborated by other sources of information.

As a result of the proposal to elevate the ''HI trolling, rod and reel'' and ''HI charter vessel'' fisheries from Category III to Category II, NMFS received an abundance of information from the public. This information, which is summarized in the comments 16–26 above, provides NMFS with new information the Agency had not been aware of or considered when proposing to elevate these fisheries to Category II. In support of the proposed elevation, NMFS received evidence that may further corroborate the anecdotal reports of hookings reported by fishermen to researchers (comment 19), including direct observations and a videotape of troll and charter vessel operations in close proximity to spotted dolphins (information provided after the comment period had closed). At the same time, NMFS received multiple comments suggesting that elevation may not be warranted. First, multiple commenters provided information to suggest NMFS may have overestimated the distribution and level of commercial fishing effort ''fishing on'' dolphins (comment 16). Second, the State of HI provided license and trip report data that indicate infrequent reporting of catch lost to dolphin predation, which suggests the frequency at which dolphins are seriously injured may fall below the projected take estimates provided by NMFS in the proposed rule (comment 18). Third, the author of the newspaper article NMFS considered (Rizutto, 2007) commented that NMFS should not rely on his newspaper article for purposes of elevating the fisheries, that the instance described in the article was based on a third-hand account, and that he reported on this one instance because he believed it to be a rare event (comment 16).

Based on the information described in comments 16–26 and summarized in the previous paragraph, it is apparent that certain pieces of the new information seem to indicate a Category II classification is not warranted, while other pieces of new information seem to indicate a Category II classification is warranted. Therefore, NMFS needs additional time to consider and investigate the information provided by the public commenters to better understand the nature and level of interactions between these fisheries and Pantropical spotted dolphins. For this reason, NMFS is not elevating the ''HI trolling, rod and reel'' and ''HI charter vessel'' fisheries to Category II or adding Pantropical spotted dolphins to the list of species or stocks killed or injuries in these fisheries in this final rule. Instead, over the next year NMFS will continue to review the information received from the public, along with the information on which the initial proposed fishery elevations were based (see 76 FR at37720–37721, June 28, 2011), and will propose to elevate the ''HI trolling, rod and reel'' and ''HI charter vessel'' fisheries to Category II on the 2013 LOF, if warranted.

Comments on Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico and Caribbean

Comment 27: The Garden State Seafood Association submitted four questions regarding the spatial boundary NMFS uses to separate fisheries in the northeast from the mid-Atlantic, including: (1) What is the Agency's justification for the spatial boundary of 70° west long. separating the northeast and mid-Atlantic?; (2) What purpose does the clarification of the boundary serve?; (3) How does the spatial boundary impact the bycatch analysis and the estimates?; (4) If bycatch incidents are attributed to a directed fishery, what is the purpose of the spatial boundary?

Response: NMFS' justification originates from the review of the northeast Fishing Vessel Trip Report (VTR) data, as stated in the language for the proposed change. Spatial data from fishing effort reported on VTR's were used in conjunction with our current state of knowledge regarding ecosystem, habitat, spatial, and temporal characteristics associated with marine mammal stock distributions. This information in aggregate was used to define the Northeast and Mid-Atlantic regions for the purpose of estimating

bycatch of marine mammals in trawl gear. The clarification was made to provide more detail on the spatial boundary and report to the public that it is consistent with how scientists at the NEFSC define the fishery. The clarification of the spatial boundary will have no impact on the bycatch analyses as the NEFSC has been using the reported spatial boundary since 2006 when the Atlantic Trawl Gear Take Reduction Team was first convened. Bycatch incidents of marine mammals are not attributed to a directed fishery. Marine mammal bycatch rates are estimated by gear type operating within the defined spatial strata. The Northeast and Mid-Atlantic regions essentially perform as spatial strata that can be further stratified by temporal and/or environmental parameters that show strong correlation with bycatch events (Rossman, 2010).

Comment 28: In addition to providing the estimated number of vessels in a particular fishery in the annual LOF, which NMFS acknowledges is ''inflated,'' the Garden State Seafood Association asks why NMFS does not also provide the number of vessels reporting landings in a particular fishery per year, because it would be informative for the public to see the difference?

Response: After investigating the use of landings data as an indicator of active fishery participants, NMFS has determined that landings databases that include state fisheries do not always record unique values or permit information that would result in differentiating one fishery participant from another. This may have a significant impact on estimating the number of active vessels or permit holders, though it is not clear whether or not these numbers would represent inflations or deflations of actual effort. While the numbers provided in Table 2 may be inflated compared to actual effort, they do represent potential effort. NMFS feels this use is appropriate for the purposes of the List of Fisheries given that this information is used solely for descriptive purposes and not used in determining current or future management of fisheries, observer coverage designations, or bycatch rates.

Comment 29: The Commission recommends that NMFS work on its own and in collaboration with states to develop new, consistent methods for estimating fishing effort for several Southeast Atlantic, Mid-Atlantic, and New England fisheries because fisheries managers should have clear measures of effort for the fisheries they manage. The Commission understands, based on NMFS' responses to previous recommendations on this issue, that the newly proposed numbers of estimated vessels/participants in these fisheries are intended to reflect potential effort (given that not all permitted fishermen fish), and that ''a clear measure of effort for all state fisheries in the Northeast and Mid-Atlantic has not been determined due to the manner in which many state permits allow for the use of multiple gear types'' (75 FR 68478, June 28, 2011). However, although NMFS has tried to reassure the Commission that these great fluctuations in vessel/person numbers have no management or observer implications, the Commission remains concerned about the uncertainty conveyed by these numbers.

Response: As stated in the Final 2011 LOF, Table 2 represents a description of each fishery including the estimated number of persons/vessels active in the fishery. Currently, a clear measure of effort for all state fisheries has not been determined due to the way many state permits allow for the use of multiple gear types. Therefore, NMFS has determined that this portion of the table will be representative of current permit holders, state and federal, that have the potential to participate in a particular fishery. As stated in the proposed LOF, NMFS recognizes there may be disparity between permit holders listed and actual fishery effort; however, the numbers provided in the LOF are solely used for descriptive purposes and will not be used in determining future management of fisheries, observer coverage designations, or bycatch rates. Further, NMFS has communicated with the states regarding the need for consistent fishing effort data collection methods across states to better assess fisheries' effects on marine mammal stocks that have interstate distributions. NMFS will continue to communicate this need through TRT processes, LOF yearly inquiries, and the MMAP's integrated registration process.

Comment 30: The Commission concurs with NMFS' proposal to add Risso's dolphin (WNA stock) to the list of species or stocks incidentally killed or seriously injured in the Category II ''Mid-Atlantic bottom trawl'' fishery based on 15 Risso's dolphins observed killed in this fishery in 2010. The Commission states that this level of take is noteworthy, because although fishery-related mortality for this stock between 2004 and 2008 averaged 20 deaths or serious injuries in all fisheries per year, no deaths in this specific fishery were reported during that 5-year period. Therefore, the Commission also recommends NMFS further investigate any factors that may account for the notable recent increase in takes of Risso's dolphins in this fishery.

Response: NMFS agrees with the Commission's comment. There could be several factors related to the increase in observed bycatch of Risso's dolphins in the Mid-Atlantic region bottom trawl fishery. It is unclear whether an increase in observer coverage may have contributed to number of takes observed in 2010. The NEFSC intends to evaluate the Risso's dolphin bycatch events from 2010 and will reports its findings in the 2012 SAR.

Comment 31: The CBD applauds NMFS' proposal to add Risso's dolphin (WNA stock) to the list of species or stocks incidentally killed or injured in the Category II ''Mid-Atlantic bottom trawl'' fishery despite the 2010 SAR's failure to include any mortality after 2008 to Risso's dolphins; however, the CBD asserts that this fishery should be classified as Category I. The CBD notes that the fifteen dolphins killed in 2010 were those observed and the actual mortality should be estimated at several times that based on levels of observer coverage ranging from 0 to 13.3 percent. Therefore, CBD asserts that it is very likely that this multiplier causes mortality in this fishery to represent more than 50 percent of the stock's PBR of 124 (*i.e.,* if observer coverage were 10 percent, observed mortality should be multiplied by ten and actual mortality estimated at 150 dolphins, exceeding the PBR).

Response: For the 2012 LOF, a reclassification of the ''Mid-Atlantic bottom trawl'' fishery to a Category I is not warranted. NMFS analyzes observer data and applies observed takes against calculated PBR levels during the process of updating and publishing the annual SARs. NMFS then classifies fisheries on the LOF based on the most recent SARs (including observer documented interactions, stranding data, and other data reported in the SARs). The current timing of the LOF publication and availability of both fishery dependent and independent data (both needed to estimate total mortality) to scientists are not in sync making it difficult to fully evaluate total bycatch mortality of a given stock for annual updates to the LOF. Using the count of takes seen by fisheries observers is an approach that is historically consistent with documenting relative levels of interactions with commercial fisheries for the LOF. Total bycatch mortality for Risso's dolphins due to commercial fishery interactions is scheduled to be evaluated and reported in the 2012 SAR. NMFS will revisit the classification of the ''Mid-Atlantic bottom trawl'' fishery once the 2012 SAR is published.

Additionally, percent observer coverage is not an appropriate metric to use as a multiplier for evaluating the risk a particular fishery poses to a marine mammal stock. It is also not appropriate to arbitrarily select 10 percent coverage from values ranging from 0 to 13.3 percent. Observer coverage has been increasing in small increments in specific target fisheries within the ''Mid-Atlantic bottom trawl'' fishery in recent years. What is presently known is that all the reports of observed bycatch of Risso's dolphins in 2010 originated from the Mid-Atlantic region where observer coverage has averaged only three percent during the last 5 years (2005–2009; draft 2011 SAR).

Comment 32: The USFWS provides NMFS with a report and photos from the Puerto Rico Department of Natural and Environmental Resources briefly describing the capture of a manatee by seine gear in July 2009.

Response: NMFS thanks USFWS for the report regarding the manatee take. Based on Puerto Rico (PR) Fishing Regulations 6768 of February 11, 2004 Article 15, use of beach seines in Puerto Rican waters was prohibited at the time of the take. Because this take was illegal and the specifics of are unknown (*e.g.,* gear design, soak time, location specifics, *etc.*), NMFS is not including manatees on the list of species or stocks killed or injured by the Caribbean haul/beach seine fishery on the LOF, and the fishery will remain classified as Category III. However, NMFS recommends that the USFWS add this take to the SAR for the Antillean manatee. Furthermore, the PR Fishing Regulations 7949 of November 29, 2010, now allows the use of beach seines. NMFS will work with USFWS to ensure any future takes that occur in this fishery are considered in the future LOFs and SAR.

Comment 33: The Commission concurs with NMFS' proposal to list bottlenose dolphins (Northern NC estuarine system stock) as a stock subject to incidental killing or serious injury in the ''VA pound net'' fishery. The Commission further recommends that NMFS work with the State of VA to develop a formal, scientifically sound system for observing or otherwise monitoring marine mammal interactions in this fishery.

Response: NMFS agrees that developing and implementing a formal observer program for the VA pound net fishery is important, and NMFS is exploring mechanisms to accomplish this with the State of VA. Meanwhile, NMFS monitors marine mammal interactions with this fishery in two ways: (1) Monitoring through the NMFS Northeast Fishery Science Center and (2) evaluating stranding data collected by the Stranding Network since the late 1990s.

Comment 34: The Commission concurs with the addition of bottlenose dolphins (Gulf of Mexico bay, sound, and estuarine stock) to the list of species or stocks incidentally killed or injured by the ''Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel'' fishery and recommends NMFS elevate this fishery to Category II based on evidence of interactions from 38 dolphins between 2002–2009 in gear consistent with recreational hook and line gear. The Commission believes that even without a quantitative analysis of average annual mortality and serious injury or comparisons with PBR levels, NMFS has sufficient evidence to conclude that the fishery results in at least occasional takes of bottlenose dolphins and warrants a Category II listing.

Response: At this time, there are not sufficient data to elevate this fishery. Hook and line fishing gear is used by both individual recreational anglers and commercial passenger fishing vessels; thus, it is difficult to discern how many animals are taken incidental to the Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel fishery and how many animals are taken by a similar recreational fishery. NMFS will continue analyzing all stranding information for future LOFs to determine appropriate classification for hook and line fishery interactions.

Comment 35: The Commission reiterated past concerns about the lack of information on many species and stocks of marine mammals in the Gulf of Mexico and recommends that NMFS work with the Commission to develop an effective long-term strategy for determining marine mammal stock structure and abundance, potential biological removal levels, and fisheries mortality and serious injury rates in the Gulf of Mexico. The Commission notes that in responding to these past recommendations, NMFS has consistently stated that collection of information about fishery interactions is a high priority and will occur if resources become available, also emphasizing the value of information gathered via fishermen self-reports and stranding networks. In its response to the Commission's letter on the proposed 2011 LOF, NMFS noted how, as a result of the BP/Deepwater Horizon MC252 oil spill response and restoration efforts, additional surveys and mark-recapture studies were underway for some bay, sound, and estuarine stocks, and that this work would provide updated abundance estimates and potential biological removal levels for some stocks. The Commission appreciates NMFS' expressed intention to expand its efforts and investments in these areas; however, the Commission also believes that these efforts and investments would benefit from a more comprehensive, aggressive, and innovative strategy.

Response: NMFS agrees that determining marine mammal stock structure and abundance, potential biological removal levels, and fisheries mortality and serious injury rates in the Gulf of Mexico are priorities. NMFS Southeast Fisheries Science Center (SEFSC) conducts all marine mammal stock assessments for the Southeast, which are provided annually in SARs and include information on stock structure and abundance, potential biological removal levels, and fisheries mortality and serious injury rates. While NMFS uses this and other information to classify fisheries on the LOF, NMFS does not determine this information on the annual LOF. Therefore, NMFS recommends the Commission continue to provide comments regarding enhanced stock assessments during the public comment period for the annual SARs.

Comment 36: The Blue Water Fishermen's Association (BWFA) recommends NMFS standardize methods for analyzing data and observer coverage in the Atlantic pelagic longline fishery. BWFA states that the Atlantic and Gulf of Mexico SARs maintain the use of data that result in a gross distortion of the impacts of the shrinking longline fleet, including estimates of total annual serious injury and mortality extrapolated from an imprecise ''pooling'' method, the problems with which are compounded by attempts to assess serious injury by studying observer comments and applying a percentage to all extrapolated estimates. Further, BWFA asserts that NMFS continues to use disparate methods and different values to calculate percentages of observer coverage for the pelagic longline fishery versus other fisheries, which presents a skewed picture of the true rate of observer coverage of fishing effort.

Response: NMFS responded to a similar comment on the 2006 LOF (71 FR 48802, August 22, 2006, comment/response 18). NMFS' SEFSC develops fishery observer programs and methods for analyzing related data, and reports this information in the annual SARs. While NMFS uses this and other information to classify fisheries on the

LOF, NMFS does not determine this information on the annual LOF. Therefore, NMFS recommends the BWFA provide comments regarding these methods during the public comment period for the annual SARs.

Comment 37: The BWFA hopes that NMFS will provide financial support through the establishment of specific grants to help continue research efforts for practical solutions to the problem of marine mammal depredation on hooked catches. The BWFA notes that with the current requirements to use corrodible circle hooks and to carry and use safe handling and release tools and techniques, along with BWFA's support for research efforts of the Consortium for Wildlife Bycatch Reduction in helping to expand the understanding of the nature of pilot whale interactions, this fishery is already leading the way toward alleviating its interactions with protected species.

Response: NMFS thanks BWFA for their support of research efforts to reduce marine mammal bycatch. While the LOF does not include any funding mechanisms to support research efforts, NMFS provides funding for such research via other sources. For example, NMFS provides funding through NC Sea Grant for cooperative research between academics and fishermen to better understand pilot whale interactions with the pelagic longline fishery as described in the Pelagic Longline Take Reduction Plan.

Comment 38: The BWFA reiterated past recommendations for NMFS to subdivide the Atlantic Ocean, Caribbean and Gulf of Mexico pelagic longline fisheries for swordfish, tuna and sharks into three regional fisheries, the Atlantic (north), Caribbean (south), and Gulf of Mexico, citing four arguments. First, BWFA states that subdividing the fishery would more accurately reflect the geographical differences in target species, scientific data on the stocks of marine mammals listed as interacting with the U.S. Atlantic pelagic longline gear, and would take into account NMFS's regulations that have permanently closed specific areas of the southeast Atlantic coast. Second, BWFA notes that the catch and effort information for U.S. pelagic longline gear is recorded in distinct geographical regions and NMFS takes effort by area into account when calculating estimates of interactions; therefore, separating these fisheries by fishing region would facilitate establishing a standardized process for monitoring effort, estimating serious injury and incidental mortality rates, and evaluating the effectiveness of reduction methods. Third, BWFA disagrees with past statements from NMFS that nearly all of the fishery participants move across the proposed boundaries, noting that the recent available effort data shows a very high percentage of the Gulf of Mexico vessels fish nowhere else, most of the vessels that fish north or south of the Georgia/Florida border (within the EEZ) do not travel north or south of their region, and a small number (<12) of Atlantic distant-water vessels customarily travel north and south in international waters beyond the U.S. EEZ. Lastly, BWFA asserts that when compared to NMFS's division of various Pacific and Alaska fisheries, including the AK gillnet fisheries, the pelagic longline fisheries in the Atlantic and the Gulf of Mexico are being unjustly and incorrectly grouped into one single fishery.

Response: NMFS responded to similar comments in the 2001, 2003, and 2006 LOFs (66 FR 42780, August 15, 2001, comment/response 16; 68 FR 41725, July 15, 2003, comment/response 29; 71 FR 48802, August 22, 2006, comment/response 16). NMFS designates fishery descriptions on the LOF so as to be consistent with the current management structure for the fishery under the Atlantic Highly Migratory Species (HMS) FMP. The pelagic longline fishery in the Atlantic is managed by NMFS as one fishery under the Atlantic HMSFMP encompassing all longline fishing effort targeting highly migratory species that may occur throughout the Atlantic Ocean, Caribbean, and Gulf of Mexico. The development of management measures to reduce serious injuries and mortalities of marine mammals in the longline fishery has focused primarily on those areas where interactions pose particular risk to marine mammals. However, as long as interactions continue to occur throughout the fishery, NMFS will maintain the current fishery designation on the LOF.

Comment 39: The Florida Fish and Wildlife Conservation Commission (FWC) agrees that the proposed LOF would not affect the land or water uses or natural resources of the coastal zone as specified under section 307 of the Coastal Zone Management Act. However, the FWC recommends that, should any changes be made to the proposed LOF before it is finalized, the decision by NMFS not to provide a consistency determination for this activity should be revisited. Further, the FWC would appreciate consultation prior to NMFS making a decision not to provide a consistency determination for future LOFs.

Response: In the future NMFS will consult with the State of FL when determining consistency determinations under CZMA for any LOF actions that may impact fisheries managed by the State.

Comment 40: The HSUS is supportive of the inclusion of bottlenose dolphins in the list of species or stocks that are killed or injured with a number of Atlantic gillnet, trawl and trap/pot fisheries utilizing gear types known to interact with bottlenose dolphins, whose evolving changes in stock structure may result in impacts from these fisheries occurring at levels that are greater than previously thought.

Response: NMFS acknowledges this comment. The proposed additions of bottlenose dolphins to the list of species or stocks that are killed or injured to a number of Atlantic gillnet, trawl and trap/pot fisheries are finalized in this final rule.

Comment 41: The FWC identifies some mischaracterizations in the description of the ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot fishery,'' including: (1) The proposed rule is essentially correct that traps are the only gear used in the commercial portion of this fishery, but stone crab claws are also lawfully harvested by hand recreationally; (2) Trap specifications for stone crab traps may be found in FWC rule, Chapter 68B–13, FL Administrative Code (F.A.C), not FL statutes; (3) In addition to the requirement for buoys attached to commercial traps to be marked with an ''X,'' the trap owner's stone crab endorsement number must be marked in characters at least 2 inches high on each buoy and harvester's must attach a tag that corresponds to a valid FWC-issued trap certificate; and (4) Ch. 68B–13.009(3), F.A.C. includes trap marking requirements for recreational harvest, stating the buoy attached to each trap, except those fished from a dock, shall have a permanently affixed and legible ''R'' at least 2 inches high, and the harvester's name and address.

Response: NMFS thanks the FWC for providing this information. Based on information provided by FWC, NMFS has clarified the language characterizing the ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' in this final LOF.

Comment 42: The Florida Keys Commercial Fishermen's Association (FKCFA) requests NMFS continue to classify the ''South Atlantic, Gulf of Mexico stone crab trap/pot'' fishery as Category III based on the real differences between this fishery and the ''Atlantic blue crab trap/pot'' fishery, questionable data, a substantial law enforcement presence in the areas fished, and the extremely low number of interactions in the past decade. First, the FKCFA notes

that the stone crab trap/pot fishery differs significantly from the blue crab trap/pot fishery in the methods the gear is fished, the location the gear is deployed, and how the gear may interact with marine mammals. Second, the FKCFA requests additional details about the stranding data used to propose the classification change. Third, the FKCFA notes that nearly 50 percent of stone crab trap/pot fishing takes place in the waters of the FL Keys and Monroe County where there have been no recorded deaths to dolphins associated with the stone crab trap/pot fishery, and where there is a tremendous presence from law enforcement, marine scientists, and charter/for-hire and recreational boaters who are likely to observe and report interactions.

Response: From 2002–2010 stranding data, NMFS confirmed that three bottlenose dolphin serious injuries and mortalities were a result of interactions with the stone crab fishery. The NMFS Southeast Regional Office gear analysis team analyzed the gear recovered on the stranded dolphins and confirmed the gear was from the stone crab fishery. Seven additional bottlenose dolphin serious injuries or mortalities were confirmed to result from interactions with trap/pot gear from a southeast trap/pot fishery. Although specific fishery attribution was not possible for the gear found on these seven dolphins, NMFS conducted a spatial and temporal analysis of the fishery and interactions and determined it is likely these dolphins were also entangled in stone crab gear. The three confirmed stone crab takes and seven additional possible takes by stone crab gear since 2002 provide reasonable evidence that the stone crab fishery by itself is responsible for the annual removal of between 1 and 50 percent of any stock's PBR and should be classified as a Category II fishery. Two of the three confirmed takes incidental to the stone crab fishery occurred in Biscayne Bay, Florida, within the range of the Biscayne Bay bottlenose dolphin stock, representing at least 4.4 percent of the Biscayne Bay bottlenose dolphin stock's total. NMFS classifies each fishery on the LOF based on the serious injury or mortality level in the entire fishery; therefore, regardless of the three serious injuries to dolphins from trap/pot gear reported in the FL Keys and Monroe County waters between 2002–2010 (gear was not analyzed by gear analysis team, but based on spatial temporal analysis stone crab gear is a possibility for all three cases), the stranding data from Biscayne Bay and by analogy to the ''Atlantic blue crab trap/pot'' fishery indicate a Category II classification of the fishery is warranted. Based on this information, NMFS has classified this fishery as Category II in this final rule.

Comment 43: The HSUS and the CBD support the elevation of the ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery to a Category II fishery. However, the CBD asserts that given the small size and complex stock structure of Gulf of Mexico bottlenose dolphin stocks, the stone crab fishery should be categorized as a Category I fishery. The HSUS is also concerned that the growing understanding of the existence of resident populations of bottlenose dolphins in individual bays, sounds, and estuaries underscores the need to better inform management of fishery interactions with dolphins. Both the CBD and HSUS recommend that observer coverage is necessary to better monitor fisheries interaction effects on these small, distinct dolphin stocks.

Response: The stranding data analyses described in the proposed 2012 LOF indicates that the ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery is not responsible for a PBR removal level of greater than 50 percent for any stock. The removal calculation of the two takes by stone crab gear was estimated to be at least 4.4 percent of the Biscayne Bay bottlenose dolphin stock's total. Therefore, based on the best available information and according to the definition of a Category I fishery (''annual mortality and serious injury of a stock in a given fishery is greater than or equal to 50 percent of the PBR level''), a Category I classification for the ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' is not warranted. The fishery is classified as Category II in this final rule. NMFS will continue to monitor interactions with this fishery each year to determine if reclassification is warranted. Furthermore, NMFS agrees that a greater understanding of the operations of fishery interactions with dolphins is important to inform management. Observer coverage for fisheries in which historical data, anecdotal accounts, or stranding data indicate a high probability for serious injury or lethal interactions to marine mammal populations are a priority if funding becomes available. For example, in 2011 NMFS was able to support observer coverage for the Gulf of Mexico Menhaden fishery in order to help better understand the nature and scope of marine mammal interactions with this fishery.

Comment 44: The Commission concurs with NMFS' proposal to elevate the ''Southeastern Atlantic, Gulf of Mexico stone crab trap/pot'' fishery to Category II because it utilizes gear and techniques common with other fisheries that are known to entangle bottlenose dolphins. The Commission recognizes that while quantitative information on mortality and serious injury rates and PBR levels for 5 of the 7 stocks confirmed or plausibly seriously injured by this fishery are not available, the many similarities with the Category II ''Atlantic blue crab trap/pot'' fishery and information on dolphin stranding events warrant a Category II classification.

Response: NMFS acknowledges this comment. The ''Southeastern Atlantic, Gulf of Mexico stone crab trap/pot'' fishery is classified as Category II in this final rule.

Comments on Commercial Fisheries on the High Seas

Comment 45: The HLA disagrees with NMFS' proposal to add a number of ''unknown'' stocks to the list of species or stocks injured or killed in the ''HI deep-set (tuna target)'' and ''HI shallow-set (swordfish target)'' longline/set line fisheries, despite NMFS' acknowledging that the ''proposed addition of these unknown stocks is not due to additional observed takes…'' (76 FR 37716, June 28, 2011). The HLA asserts that the inclusion of species or stocks for which there has never been an observed interaction is arbitrary and capricious and violates the plain language of the MMPA, which states that NMFS include in the LOF ''a statement describing the marine mammal stocks interacting with'' a given fishery (MMPA section 118(c)). The HLA states that there is no room in this language for the inclusion of ''unknown'' marine mammal species or stocks that NMFS speculates may, but have not been observed to, interact with the fishery.

Response: The proposed additions of unknown stocks are for species that have been observed to have been taken by the HI-based deep-set and shallow-set longline fisheries on the high seas, but for which the stock identity could not be determined. For this fishery, the unknown stocks include stocks for Blainville's beaked whale, bottlenose dolphin, Pantropical spotted dolphin, Risso's dolphin, short-finned pilot whale, striped dolphin, Bryde's whale, and *Kogia spp. whale. (*Please refer to the proposed rule at 76 FR 37716, June 28, 2011, for more information.) NMFS' SARs for HI pelagic cetacean stocks note that the stocks' ranges extend into the high seas, but the full offshore ranges are unknown. For those animals taken by the longline fisheries on the high seas, it is unknown in most cases

whether the animals belong to the HI pelagic stocks, or whether the animals are from stocks beyond the (unknown) range of the HI pelagic stocks. This is particularly true for takes that occur far outside the U.S. EEZ. At this point, NMFS cannot assume that all takes are from HI pelagic stocks. Therefore, NMFS' inclusion of ''unknown'' stocks that are known to interact with the longline fisheries on the high seas merely acknowledges the uncertainty in stock identification.

Comment 46: The Commission concurs with NMFS' proposal to add several marine mammal stocks, absent information on stock identity and fisheries interactions, to the list of those subject to incidental killing or serious injury in the Category I ''Western Pacific pelagic fishery, I deep-set component'' and the Category II ''Western Pacific pelagic fishery, HI shallow-set component'' because such additions better reflect the state of information and need for caution in managing interactions between marine mammals and these high seas fisheries. Further, the Commission notes that these additions point to the need to work with industry and increase investment and initiatives to gather more information about high seas marine mammal stocks, including their boundaries and interactions with fisheries. Therefore, the Commission recommends that NMFS work with its international and industry partners to compile and analyze information about marine mammals on the high seas and their interactions with fisheries, so that the list of species incidentally killed or seriously injured in high seas fisheries can be refined in the near future.

Response: NMFS agrees that the addition of these ''unknown'' stocks reflects the lack of information on stock structure and stock identity for marine mammals on the high seas that interact with the U.S. longline fisheries. NMFS has and will continue to work with international and industry partners to gather information on marine mammal stocks and high seas fishery interactions to better understand the stocks and U.S. fisheries' impacts on them.

Comment 47: The Council argues that while additions of ''unknown stocks'' are made for the high seas ''Western Pacific pelagic'' fisheries, additions of ''unknown stocks'' are not made for other high seas fisheries, including the high seas ''Atlantic highly migratory species'' fishery that has ten different stocks of marine mammals known to be incidentally injured or killed.

Response: There is not significant evidence that ''unknown stocks'' are currently incidentally killed or injured in the ''Atlantic highly migratory species longline'' fishery; therefore, ''unknown'' stocks are not listed under this fishery in Table 3. For detailed information on why NMFS includes ''unknown'' stocks in on the list of species or stocks killed or injured in the high seas ''Pacific highly migratory species longline'' fisheries (HI deep-set and HI shallow-set), please see the response to comment 45 above.

For the majority of high seas fisheries, NMFS does not have data to create a list of which marine mammal species or stocks are killed or injured on the high seas. For fisheries that occur only on the high seas and are not extensions of fisheries operating in U.S. waters, the marine mammals species killed or injured in those fisheries are listed as ''undetermined'' in Table 3. For high seas fisheries that are extensions of a fishery operating in U.S. waters, but for which there are no data on takes on the high seas, NMFS includes an identical list of marine mammal species as are listed as killed or injured in the portion of the fishery operating in U.S. waters (minus exclusively coastal stocks). These fisheries are identified in Table 3 by a ''–'' after their names. For high seas fisheries that are extensions of a fishery operating in U.S. waters for which NMFS does have observed mortalities or injuries on the high seas, the species or stocked observed as killed or injured on the high seas are listed. These fisheries are identified in Table 3 by a ''+'' after their names.

Summary of Changes From the Proposed Rule

In this final rule, NMFS is not elevating the ''HI trolling, rod and reel'' or the ''HI charter vessel'' fisheries to Category II as proposed, instead these fisheries are retained as Category III. For additional information, see comments 16–26, and the associated comment response, under *''Comments on the Hawaii Troll and Charter Vessel Fisheries''* above.

In this final rule, NMFS is not adding Pantropical spotted dolphins (HI stock) to the list of species or stocks incidentally killed or injured in the ''HI trolling, rod and reel'' or ''HI charter vessel'' fisheries. For additional information, see comments 16–26, and the associated comment response, under ''Comments on the Hawaii Troll and Charter Vessel Fisheries'' above.

In this final rule, NMFS updates the fishery description for the ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery to clarify the State of Florida's regulations for this fishery, based on comments received from the FL Fish and Wildlife Commission (see comment/response 41). The final fishery description is provided above under the section ''Fishery Descriptions.''

NMFS corrects a typographical error in the proposed rule, which stated the ''CA pelagic longline'' fishery occurs within the EEZ, when in fact this fishery has always occurred on the high seas, seaward of the EEZ. The ''CA pelagic longline'' fishery targets highly migratory species (HMS) and the use of longline gear to target HMS within the EEZ off of CA is prohibited by NOAA regulations under the Magnuson-Stevens Fishery Conservation and Management Act, as well as by State of CA.

Summary of Changes to the LOF for 2012

The following summarizes changes to the LOF for 2012 in fishery classification, fisheries listed in the LOF, the estimated number of vessels/participants in a particular fishery, and the species or stocks that are incidentally killed or injured in a particular fishery. The classifications and definitions of U.S. commercial fisheries for 2012 are identical to those provided in the LOF for 2011 with the changes discussed below.

Commercial Fisheries in the Pacific Ocean

Fishery Classification

The ''CA thresher shark/swordfish drift gillnet'' fishery is elevated from Category III to Category II.

Fishery Name and Organizational Changes and Clarifications

NMFS corrects a typographical error that appeared in the proposed 2012 LOF, which stated the ''CA pelagic longline'' fishery occurs within the EEZ, when in fact this fishery has always occurred on the high seas, seaward of the EEZ. The ''CA pelagic longline'' fishery targets highly migratory species (HMS) and the use of longline gear to target HMS within the EEZ off of CA is prohibited by NOAA regulations under the Magnuson-Stevens Fishery Conservation and Management Act, as well as by State of CA. This fishery is the same as the ''Pacific Highly Migratory Species'' longline fishery listed in Table 3. The error in the proposed 2012 LOF occurred when NMFS provided a correction to the 2011 LOF to ensure that this one fishery, although listed separately on Table 1 and Table 3 (the reasons for which are explained in the preamble under ''Are High Seas Fisheries Included on the LOF?''), was classified as Category III on

both tables and that marine mammal species injured or killed is the same on both tables.

Number of Vessels/Persons

The estimated numbers of persons/vessels participating in several HI fisheries are updated based on the most recent numbers of federal permits or state licenses for each fishery, as outlined below.

Category I: ''HI deep-set (tuna target) longline/set line'' from 127 to 124.

Category II: ''American Samoa longline'' from 60 to 26; ''HI shortline'' from 21 to 13; and ''HI trolling, rod and reel'' from 2,210 to 2,191.

Category III: ''HI inshore gillnet'' from 39 to 44; ''HI crab net'' from 8 to 5; ''HI Kona crab loop net'' from 41 to 46; ''HI opelu/akule net'' from 20 to 16; ''HI hukilau net'' from 36 to 27; ''HI lobster tangle net'' from 2 to 1; ''HI inshore purse seine'' from 8 to 5; ''HI throw net, cast net'' from 28 to 22; ''HI crab trap'' from 9 to 5; ''HI fish trap'' from 11 to 13; ''HI lobster trap'' from 3 to 1; ''HI shrimp trap'' from 1 to 2; ''HI kaka line'' 28 to 24; ''HI vertical longline'' from 18 to 10; ''HI aku boat, pole, and line'' from 6 to 2; ''HI inshore handline'' from 460 to 416; ''HI tuna handline'' from 531 to 445; ''HI handpick'' from 53 to 61; ''HI lobster diving'' from 36 to 39; ''HI spearfishing'' from 163 to 144; ''HI fish pond'' from N/A to 16; and ''HI Main Hawaiian Islands deep-sea bottomfish handline from 580 to 569.

List of Species or Stocks Incidentally Killed or Injured

Humpback whale (CA/OR/WA stock) is added to the list of species or stocks incidentally killed or injured in the ''CA thresher shark/swordfish drift gillnet'' fishery followed by the notation ''[1].''

Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Classification

The ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery is elevated from Category III to Category II followed by the notation ''[2].''

Addition of Fisheries

The ''RI floating trap'' fishery is added to the LOF as Category III.

Fishery Name and Organizational Changes and Clarifications

The spatial boundaries for the Category II ''Northeast bottom trawl,'' ''Northeast mid-water trawl,'' ''Mid-Atlantic bottom trawl,'' and ''Mid-Atlantic mid-water trawl'' fisheries are updated and the fishery definitions are updated to reflect this change.

Number of Vessels/Persons

The estimated number of vessels/persons participating in several New England, Mid-Atlantic, and South Atlantic fisheries are updated based on the most recent numbers of federal permits or state licenses for each fishery, as outlined below.

Category I: ''Mid-Atlantic gillnet'' from 5,495 to 6,402; ''Northeast sink gillnet'' from 7,712 to 3,828; and ''Northeast/Mid-Atlantic American lobster trap/pot'' from 12,489 to 11,767.

Category II: ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' from 4,453 to 1,282; ''Chesapeake Bay inshore gillnet'' from 1,167 to 3,328; ''Northeast anchored float gillnet'' from 662 to 414; ''Northeast drift gillnet'' from 608 to 414; ''Mid-Atlantic mid-water trawl'' from 546 to 669; ''Mid-Atlantic bottom trawl'' from 1,182 to 1,388; ''Northeast mid-water trawl (including pair trawl)'' from 953 to 887; ''Northeast bottom trawl'' from 1,635 to 2,584; Atlantic blue crab trap/pot from 6,479 to 10,008; ''Atlantic mixed species trap/pot'' from 1,912 to 3,526; ''Mid-Atlantic menhaden purse seine'' from 54 to 56; ''Mid-Atlantic haul/beach seine'' from 666 to 874; and ''VA pound net'' from 52 to 231.

Category III: ''FL spiny lobster trap/pot'' fishery from 2,145 to 1,268; ''Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge'' from 258 to > 230; ''Northeast, Mid-Atlantic bottom longline/hook & line'' from 1,183 to > 1,281; ''DE River inshore gillnet'' from 60 to unknown; ''Long Island Sound inshore gillnet'' from 20 to unknown; ''RI, southern MA (to Monomy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet'' from 32 to unknown; ''Gulf of Maine Atlantic herring purse seine'' from > 7 to > 6; ''U.S. Mid-Atlantic eel trap/pot'' from > 700 to unknown; and ''Atlantic shellfish bottom trawl'' from > 67 to > 86.

List of Species or Stocks Incidentally Killed or Injured

Killer whale (GMX oceanic stock), sperm whale (GMX oceanic stock), and Gervais beaked whale (GMX oceanic stock) are added to the list of species or stocks incidentally killed or injured in the Category I ''Atlantic Ocean, Caribbean, Gulf of Mexico large pelagic longline'' fishery.

Atlantic spotted dolphin (Northern GMX stock) stock name is updated to Atlantic spotted dolphin (GMX continental and oceanic) on the list as species or stocks incidentally killed or injured in the Category I ''Atlantic Ocean, Caribbean, Gulf of Mexico large pelagic longline'' fishery.

Bottlenose dolphin (GA coastal stock) and bottlenose dolphin (SC coastal stock) are combined on the list as species or stocks incidentally killed or injured in the Category II ''Southeast Atlantic gillnet'' fishery and renamed bottlenose dolphin (SC/GA coastal stock).

Bottlenose dolphin (Northern FL coastal stock) is added to the list of species or stocks incidentally killed or injured in the Category II ''Southeastern U.S. Atlantic shark gillnet'' fishery.

Bottlenose dolphin (Northern GMX coastal stock) and bottlenose dolphin (GMX continental shelf stock) are added to the list of species or stocks incidentally killed or injured in the Category II ''Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl'' fishery.

Atlantic spotted dolphin (Northern GMX) is updated to Atlantic spotted dolphin (GMX continental and oceanic) on the list of species or stocks incidentally killed or injured in the Category II ''Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl'' fishery.

Bottlenose dolphin (GA coastal stock) and bottlenose dolphin (SC coastal stock) are combined on the list of species or stocks incidentally killed or injured in the Category II ''Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl'' fishery and renamed bottlenose dolphin (SC/GA coastal stock).

Bottlenose dolphin (GA coastal stock) and bottlenose dolphin (SC coastal stock) are combined on the list of species or stocks incidentally killed or injured in the Category II ''Atlantic blue crab trap/pot'' fishery and renamed the stock bottlenose dolphin (SC/GA coastal stock).

Bottlenose dolphin (Southern NC estuarine system stock) is added to the list of species or stocks incidentally killed or injured in the Category II ''NC long haul seine'' fishery.

Bottlenose dolphin (Northern NC estuarine system stock) is added to the list of species or stocks incidentally killed or injured in the Category II ''VA pound net'' fishery.

Bottlenose dolphin (Central FL coastal stock) is added to the list of species or stocks incidentally killed or injured in the Category III ''FL spiny lobster trap/pot'' fishery.

Bottlenose dolphin (Central FL coastal stock), bottlenose dolphin (Eastern GMX coastal stock), bottlenose dolphin (FL Bay stock), bottlenose dolphin (GMX bay, sound, estuarine stock, FL west coast portion), bottlenose dolphin (Indian River Lagoon estuarine system stock), bottlenose dolphin (Jacksonville estuarine system stock), and bottlenose dolphin (Northern GMX coastal stock) are added to the list of species or stocks

incidentally killed or injured in the Category II ''Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot'' fishery.

Bottlenose dolphin (GMX continental shelf stock) is added to the list of species or stocks incidentally killed or injured in the Category III ''Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line'' fishery.

Bottlenose dolphin (GMX bay, sound, and estuarine stock) is added to the list of species or stocks incidentally killed or injured in the Category III ''Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel'' fishery.

Risso's dolphin (WNA stock) is added to the list of species or stocks incidentally killed or injured in the Category II ''Mid-Atlantic bottom trawl'' fishery.

Harbor seal (WNA stock) is added to the list of species or stocks incidentally killed or injured in the Category II ''Mid-Atlantic bottom trawl'' fishery.

Bottlenose dolphin (WNA offshore stock) is added to the list of species or stocks incidentally killed or injured in the Category II ''Northeast bottom trawl'' fishery.

Gray seal (WNA stock) is added to the list of species or stocks incidentally killed or injured in the Category II ''Northeast bottom trawl'' fishery.

Commercial Fisheries on the High Seas

Fishery Classification

The high seas ''Pacific highly migratory species drift gillnet'' fishery is elevated from Category III to Category II because the component of the fishery operating in U.S. waters is elevated in this final rule.

To correct an error in the 2011 LOF, the high seas ''Pacific highly migratory species longline'' fishery from is reclassified from Category II to Category III.

Removal of Fisheries

The Category II high seas ''Pacific highly migratory species trawl'' ''South Pacific albacore troll trawl'' fisheries are removed from the LOF.

Fishery Name and Organizational Changes and Clarifications

The name of the Category I high seas ''Western Pacific pelagic (deep-set component) longline'' fishery is changed to the ''Western Pacific pelagic (HI deep-set component) longline'' fishery.

The name of the Category II high seas ''Western Pacific pelagic (shallow-set component) longline'' fishery is changed to the ''Western Pacific pelagic (HI shallow-set component) longline'' fishery.

Number of Vessels/Persons

The estimated number of HSFCA permits is updated for several high seas fisheries for multiple gear types, as outlined below.

High seas ''Atlantic highly migratory species'' fishery for the following gear types: longline from 77 to 81; and handline/pole and line from 2 to 3.

High seas ''Pacific highly migratory species'' fishery for the following gear types: Pot from 7 to 3; longline from 75 to 85; handline/pole and line from 25 to 30; multipurpose from 7 to 5; purse seine from 8 to 7; and troll from 271 to 258.

High seas ''South Pacific albacore troll'' fishery for the following gear types: Pot from 5 to 3; and troll from 59 to 51.

High seas ''South Pacific tuna'' fishery for the following gear types: Longline from 8 to 11; and purse seine from 35 to 33.

High seas ''Western Pacific pelagic'' fishery for the following gear types: Deep-set longline from 127 to 124; pot from 7 to 3; handline/pole and line from 10 to 8; multipurpose from 5 to 4; trawl from 3 to 1; and troll from 40 to 32.

List of Species or Stocks Incidentally Killed or Injured

Humpback whale (CA/OR/WA stock) is added to the list of marine mammal stocks incidentally killed or injured in the high seas ''Pacific highly migratory species gillnet'' fishery.

Risso's dolphin (CA/OR/WA stock) is removed from the list of marine mammal stocks incidentally killed or injured in the high seas ''Pacific highly migratory species longline'' fishery.

Blainville's beaked whale (unknown stock), bottlenose dolphin (unknown stock), Pantropical spotted dolphin (unknown stock), Risso's dolphin (unknown stock), short-finned pilot whale (unknown stock), and striped dolphin (unknown stock) are added to the list of species or stocks killed or injured in the Category I high seas ''Western Pacific pelagic (HI deep-set component)'' fishery.

Bottlenose dolphin (unknown stock), Byrde's whale (unknown stock), *Kogia* spp. whale (unknown stock), Risso's dolphin (unknown stock), and striped dolphin (unknown stock) are added to the list of species or stocks killed or injured in the Category II high seas ''Western Pacific pelagic (HI shallow-set component)'' fishery.

List of Fisheries

The following tables set forth the 2012 list of U.S. commercial fisheries according to their classification under section 118 of the MMPA. Table 1 lists commercial fisheries in the Pacific Ocean (including Alaska); Table 2 lists commercial fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean; Table 3 lists commercial fisheries on the high seas; and Table 4 lists fisheries affected by TRPs or TRTs.

In Tables 1 and 2, the estimated number of vessels/persons participating in fisheries operating within U.S. waters is expressed in terms of the number of active participants in the fishery, when possible. If this information is not available, the estimated number of vessels or persons licensed for a particular fishery is provided. If no recent information is available on the number of participants, vessels, or persons licensed in a fishery, then the number from the most recent LOF is used for the estimated number of vessels/persons in the fishery. NMFS acknowledges that, in some cases, these estimations may be inflations of actual effort, such as for many of the Mid-Atlantic and New England fisheries. However, in these cases, the numbers represent the potential effort for each fishery, given the multiple gear types several state permits may allow for. Changes made to Mid-Atlantic and New England fishery participants will not affect observer coverage or bycatch estimates as observer coverage and bycatch estimates are based on vessel trip reports and landings data. Table 1 and 2 serve to provide a description of the fishery's potential effort (state and Federal). If NMFS is able to extract more accurate information on the gear types used by state permit holders in the future, the numbers will be updated to reflect this change. For additional information on fishing effort in fisheries found on Table 1 or 2, NMFS refers the reader to contact the relevant regional office (contact information included above in **SUPPLEMENTARY INFORMATION**).

For high seas fisheries, Table 3 lists the number of currently valid HSFCA permits held. Although this likely overestimates the number of active participants in many of these fisheries, the number of valid HSFCA permits is the most reliable data on the potential effort in high seas fisheries at this time.

Tables 1, 2, and 3 also list the marine mammal species or stocks incidentally killed or injured in each fishery based on observer data, logbook data, stranding reports, disentanglement network data, and MMAP reports. This list includes all species or stocks known

to be injured or killed in a given fishery, but also includes species or stocks for which there are anecdotal records of an injury or mortality. Additionally, species identified by logbook entries, stranding data, or fishermen self-reports (*i.e.,* MMAP reports) may not be verified. In Tables 1 and 2, NMFS has designated those stocks driving a fishery's classification (*i.e.,* the fishery is classified based on serious injuries and mortalities of a marine mammal stock that are greater than 50 percent [Category I], or greater than 1 percent and less than 50 percent [Category II], of a stock's PBR) by a ''[1]'' after the stock's name.

In Tables 1 and 2, there are several fisheries classified as Category II that have no recent documented injuries or mortalities of marine mammals, or fisheries that did not result in a serious injury or mortality rate greater than 1 percent of a stock's PBR level based on known interactions. NMFS has classified these fisheries by analogy to other Category I or II fisheries that use similar fishing techniques or gear that are known to cause mortality or serious injury of marine mammals, as discussed in the final LOF for 1996 (60 FR 67063, December 28, 1995), and according to factors listed in the definition of a ''Category II fishery'' in 50 CFR 229.2 (*i.e.,* fishing techniques, gear used, methods used to deter marine mammals, target species, seasons and areas fished, qualitative data from logbooks or fisher reports, stranding data, and the species and distribution of marine mammals in the area, or at the discretion of the Assistant Administrator for Fisheries). NMFS has designated those fisheries listed by analogy in Tables 1 and 2 by a ''[2]'' after the fishery's name.

There are several fisheries in Tables 1, 2, and 3 in which a portion of the fishing vessels cross the EEZ boundary, and therefore operate both within U.S. waters and on the high seas. These fisheries, though listed separately between Table 1 or 2 and Table 3, are considered the same fishery on either side of the EEZ boundary. NMFS has designated those fisheries in each table by a ''*'' after the fishery's name.

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Table 1 - List of Fisheries -- Commercial Fisheries in the Pacific Ocean

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
CATEGORY I		
LONGLINE/SET LINE FISHERIES:		
HI deep-set (tuna target) longline/set line *^	124	Blainville's beaked whale, HI Bottlenose dolphin, HI Pelagic False killer whale, HI Insular[1] False killer whale, HI Pelagic[1] False killer whale, Palmyra Atoll Humpback whale, Central North Pacific Pantropical spotted dolphin, HI Risso's dolphin, HI Short-finned pilot whale, HI Striped dolphin, HI
CATEGORY II		
GILLNET FISHERIES:		
CA halibut/white seabass and other species set gillnet (>3.5 in mesh)	50	California sea lion, U.S. Harbor seal, CA Humpback whale, CA/OR/WA[1] Long-beaked common dolphin, CA Northern elephant seal, CA breeding Sea otter, CA Short-beaked common dolphin, CA/OR/WA
CA yellowtail, barracuda, and white seabass drift gillnet (mesh size ≥3.5 in and <14 in) [2]	30	California sea lion, U.S. Long-beaked common dolphin, CA Short-beaked common dolphin, CA/OR/WA
CA thresher shark/swordfish drift gillnet (≥14 in mesh) *	45	California sea lion, U.S. Humpback whale, CA/OR/WA[1] Long-beaked common dolphin, CA Northern elephant seal, CA breeding Northern right-whale dolphin, CA/OR/WA Pacific white-sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA
AK Bristol Bay salmon drift gillnet[2]	1,862	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Spotted seal, AK Steller sea lion, Western U.S.

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
AK Bristol Bay salmon set gillnet[2]	983	Beluga whale, Bristol Bay Gray whale, Eastern North Pacific Harbor seal, Bering Sea Northern fur seal, Eastern Pacific Spotted seal, AK
AK Kodiak salmon set gillnet	188	Harbor porpoise, GOA[1] Harbor seal, GOA Sea otter, Southwest AK Steller sea lion, Western U.S.
AK Cook Inlet salmon set gillnet	738	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Humpback whale, Central North Pacific[1] Steller sea lion, Western U.S.
AK Cook Inlet salmon drift gillnet	571	Beluga whale, Cook Inlet Dall's porpoise, AK Harbor porpoise, GOA[1] Harbor seal, GOA Steller sea lion, Western U.S.
AK Peninsula/Aleutian Islands salmon drift gillnet[2]	162	Dall's porpoise, AK Harbor porpoise, GOA Harbor seal, GOA Northern fur seal, Eastern Pacific
AK Peninsula/Aleutian Islands salmon set gillnet[2]	115	Harbor porpoise, Bering Sea Steller sea lion, Western U.S.
AK Prince William Sound salmon drift gillnet	537	Dall's porpoise, AK Harbor porpoise, GOA[1] Harbor seal, GOA Northern fur seal, Eastern Pacific Pacific white-sided dolphin, North Pacific Sea otter, South Central AK Steller sea lion, Western U.S.[1]
AK Southeast salmon drift gillnet	476	Dall's porpoise, AK Harbor porpoise, Southeast AK Harbor seal, Southeast AK Humpback whale, Central North Pacific[1] Pacific white-sided dolphin, North Pacific Steller sea lion, Eastern U.S.
AK Yakutat salmon set gillnet[2]	166	Gray whale, Eastern North Pacific Harbor seal, Southeast AK Humpback whale, Central North Pacific (Southeast AK)

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
WA Puget Sound Region salmon drift gillnet (includes all inland waters south of US-Canada border and eastward of the Bonilla-Tatoosh line-Treaty Indian fishing is excluded)	210	Dall's porpoise, CA/OR/WA Harbor porpoise, inland WA[1] Harbor seal, WA inland
PURSE SEINE FISHERIES:		
AK Cook Inlet salmon purse seine	82	Humpback whale, Central North Pacific[1]
AK Kodiak salmon purse seine	370	Humpback whale, Central North Pacific[1]
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands flatfish trawl	34	Bearded seal, AK Harbor porpoise, Bering Sea Harbor seal, Bering Sea Killer whale, AK resident[1] Northern fur seal, Eastern Pacific Spotted seal, AK Steller sea lion, Western U.S.[1] Walrus, AK
AK Bering Sea, Aleutian Islands pollock trawl	95	Dall's porpoise, AK Harbor seal, AK Humpback whale, Central North Pacific Humpback whale, Western North Pacific Killer whale, Eastern North Pacific, GOA, Aleutian Islands, and Bering Sea transient[1] Minke whale, AK Ribbon seal, AK Spotted seal, AK Steller sea lion, Western U.S.[1]
POT, RING NET, AND TRAP FISHERIES:		
AK Bering Sea sablefish pot	6	Humpback whale, Central North Pacific[1] Humpback whale, Western North Pacific[1]
CA spot prawn pot	27	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA[1]
CA Dungeness crab pot	534	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA[1]
OR Dungeness crab pot	433	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA[1]
WA/OR/CA sablefish pot	309	Humpback whale, CA/OR/WA[1]
WA coastal Dungeness crab pot/trap	228	Gray whale, Eastern North Pacific Humpback whale, CA/OR/WA[1]
LONGLINE/SET LINE FISHERIES:		

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
HI shallow-set (swordfish target) longline/ set line *^	28	Bottlenose dolphin, HI Pelagic[1] Bryde's whale, HI False killer whale, HI Pelagic Humpback whale, Central North Pacific Kogia sp. whale (Pygmy or dwarf sperm whale), HI Risso's dolphin, HI Striped dolphin, HI
American Samoa longline[2]	26	False killer whale, American Samoa Rough-toothed dolphin, American Samoa
HI shortline[2]	13	None documented
AK Bering Sea, Aleutian Islands Pacific cod longline	54	Killer whale, AK resident[1] Ribbon seal, AK Steller sea lion, Western U.S.
CATEGORY III		
GILLNET FISHERIES:		
AK Kuskokwim, Yukon, Norton Sound, Kotzebue salmon gillnet	824	Harbor porpoise, Bering Sea
AK miscellaneous finfish set gillnet	3	Steller sea lion, Western U.S.
AK Prince William Sound salmon set gillnet	30	Harbor seal, GOA Steller sea lion, Western U.S.
AK roe herring and food/bait herring gillnet	986	None documented
CA set gillnet (mesh size <3.5 in)	304	None documented
HI inshore gillnet	44	Bottlenose dolphin, HI Spinner dolphin, HI
WA Grays Harbor salmon drift gillnet (excluding treaty Tribal fishing)	24	Harbor seal, OR/WA coast
WA/OR herring, smelt, shad, sturgeon, bottom fish, mullet, perch, rockfish gillnet	913	None documented
WA/OR lower Columbia River (includes tributaries) drift gillnet	110	California sea lion, U.S. Harbor seal, OR/WA coast
WA Willapa Bay drift gillnet	82	Harbor seal, OR/WA coast Northern elephant seal, CA breeding
PURSE SEINE, BEACH SEINE, ROUND HAUL, THROW NET AND TANGLE NET FISHERIES:		
AK Southeast salmon purse seine	415	None documented in the most recent 5 years of data

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
AK Metlakatla salmon purse seine	10	None documented
AK miscellaneous finfish beach seine	1	None documented
AK miscellaneous finfish purse seine	0	None documented
AK octopus/squid purse seine	0	None documented
AK roe herring and food/bait herring beach seine	4	None documented
AK roe herring and food/bait herring purse seine	361	None documented
AK salmon beach seine	31	None documented
AK salmon purse seine (excluding salmon purse seine fisheries listed as Category II)	936	Harbor seal, GOA
CA anchovy, mackerel, sardine purse seine	65	California sea lion, U.S. Harbor seal, CA
CA squid purse seine	80	Long-beaked common dolphin, CA Short-beaked common dolphin, CA/OR/WA
CA tuna purse seine *	10	None documented
WA/OR sardine purse seine	42	None documented
WA (all species) beach seine or drag seine	235	None documented
WA/OR herring, smelt, squid purse seine or lampara	130	None documented
WA salmon purse seine	440	None documented
WA salmon reef net	53	None documented
HI opelu/akule net	16	None documented
HI inshore purse seine	5	None documented
HI throw net, cast net	22	None documented
HI hukilau net	27	None documented
HI lobster tangle net	1	None documented
DIP NET FISHERIES:		
CA squid dip net	115	None documented
WA/OR smelt, herring dip net	119	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
MARINE AQUACULTURE FISHERIES:		
CA marine shellfish aquaculture	unknown	None documented
CA salmon enhancement rearing pen	>1	None documented
CA white seabass enhancement net pens	13	California sea lion, U.S.
HI offshore pen culture	2	None documented
OR salmon ranch	1	None documented
WA/OR salmon net pens	14	California sea lion, U.S. Harbor seal, WA inland waters
TROLL FISHERIES:		
AK North Pacific halibut, AK bottom fish, WA/OR/CA albacore, groundfish, bottom fish, CA halibut non-salmonid troll fisheries *	1,302 (102 AK)	None documented
AK salmon troll	2,045	Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
American Samoa tuna troll	<50	None documented
CA/OR/WA salmon troll	4,300	None documented
HI trolling, rod and reel	2,191	None documented
Commonwealth of the Northern Mariana Islands tuna troll	88	None documented
Guam tuna troll	401	None documented
LONGLINE/SET LINE FISHERIES:		
AK Bering Sea, Aleutian Islands Greenland turbot longline	29	Killer whale, AK resident
AK Bering Sea, Aleutian Islands rockfish longline	0	None documented
AK Bering Sea, Aleutian Islands sablefish longline	28	None documented
AK Gulf of Alaska halibut longline	1,302	None documented
AK Gulf of Alaska Pacific cod longline	440	None documented
AK Gulf of Alaska rockfish longline	0	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
AK Gulf of Alaska sablefish longline	291	Sperm whale, North Pacific Steller sea lion, Eastern U.S.
AK halibut longline/set line (State and Federal waters)	2,521	Steller sea lion, Western U.S.
AK octopus/squid longline	2	None documented
AK State-managed waters longline/setline (including sablefish, rockfish, lingcod, and miscellaneous finfish)	1,448	None documented
WA/OR/CA groundfish, bottomfish longline/set line	367	None documented
WA/OR North Pacific halibut longline/set line	350	None documented
CA pelagic longline*	6	None documented in the most recent 5 years of data
HI kaka line	24	None documented
HI vertical longline	10	None documented
TRAWL FISHERIES:		
AK Bering Sea, Aleutian Islands Atka mackerel trawl	9	Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands Pacific cod trawl	93	Harbor seal, Bering Sea Steller sea lion, Western U.S.
AK Bering Sea, Aleutian Islands rockfish trawl	10	None documented
AK Gulf of Alaska flatfish trawl	41	None documented
AK Gulf of Alaska Pacific cod trawl	62	Steller sea lion, Western U.S.
AK Gulf of Alaska pollock trawl	62	Fin whale, Northeast Pacific Northern elephant seal, North Pacific Steller sea lion, Western U.S.
AK Gulf of Alaska rockfish trawl	34	None documented
AK food/bait herring trawl	4	None documented
AK miscellaneous finfish otter / beam trawl	317	None documented
AK shrimp otter trawl and beam trawl (statewide and Cook Inlet)	32	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
AK State-managed waters of Cook Inlet, Kachemak Bay, Prince William Sound, Southeast AK groundfish trawl	2	None documented
CA halibut bottom trawl	53	None documented
WA/OR/CA shrimp trawl	300	None documented
WA/OR/CA groundfish trawl	160-180	California sea lion, U.S. Dall's porpoise, CA/OR/WA Harbor seal, OR/WA coast Northern fur seal, Eastern Pacific Pacific white-sided dolphin, CA/OR/WA Steller sea lion, Eastern U.S.
POT, RING NET, AND TRAP FISHERIES:		
AK statewide miscellaneous finfish pot	293	None documented
AK Aleutian Islands sablefish pot	8	None documented
AK Bering Sea, Aleutian Islands Pacific cod pot	68	None documented
AK Bering Sea, Aleutian Islands crab pot	297	None documented
AK Gulf of Alaska crab pot	300	None documented
AK Gulf of Alaska Pacific cod pot	154	Harbor seal, GOA
AK Southeast Alaska crab pot	433	Humpback whale, Central North Pacific (Southeast AK)
AK Southeast Alaska shrimp pot	283	Humpback whale, Central North Pacific (Southeast AK)
AK shrimp pot, except Southeast	15	None documented
AK octopus/squid pot	27	None documented
AK snail pot	1	None documented
CA coonstripe shrimp, rock crab, tanner crab pot or trap	305	Gray whale, Eastern North Pacific Harbor seal, CA
CA spiny lobster	225	Gray whale, Eastern North Pacific
OR/CA hagfish pot or trap	54	None documented
WA/OR shrimp pot/trap	254	None documented
WA Puget Sound Dungeness crab pot/trap	249	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
HI crab trap	5	None documented
HI fish trap	13	None documented
HI lobster trap	1	Hawaiian monk seal
HI shrimp trap	2	None documented
HI crab net	5	None documented
HI Kona crab loop net	46	None documented
HANDLINE AND JIG FISHERIES:		
AK miscellaneous finfish handline/hand troll and mechanical jig	445	None documented
AK North Pacific halibut handline/hand troll and mechanical jig	228	None documented
AK octopus/squid handline	0	None documented
American Samoa bottomfish	<50	None documented
Commonwealth of the Northern Mariana Islands bottomfish	<50	None documented
Guam bottomfish	200	None documented
HI aku boat, pole, and line	2	None documented
HI Main Hawaiian Islands deep-sea bottomfish handline	569	Hawaiian monk seal
HI inshore handline	416	None documented
HI tuna handline	445	None documented
WA groundfish, bottomfish jig	679	None documented
Western Pacific squid jig	6	None documented
HARPOON FISHERIES:		
CA swordfish harpoon	30	None documented
POUND NET/WEIR FISHERIES:		
AK herring spawn on kelp pound net	415	None documented
AK Southeast herring roe/food/bait pound net	6	None documented

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
WA herring brush weir	1	None documented
HI bullpen trap	4	None documented
BAIT PENS:		
WA/OR/CA bait pens	13	California sea lion, U.S.
DREDGE FISHERIES:		
Coastwide scallop dredge	108 (12 AK)	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
AK abalone	0	None documented
AK clam	156	None documented
WA herring spawn on kelp	4	None documented
AK Dungeness crab	2	None documented
AK herring spawn on kelp	266	None documented
AK urchin and other fish/shellfish	570	None documented
CA abalone	0	None documented
CA sea urchin	583	None documented
HI black coral diving	1	None documented
HI fish pond	16	None documented
HI handpick	61	None documented
HI lobster diving	39	None documented
HI spearfishing	144	None documented
WA/CA kelp	4	None documented
WA/OR sea urchin, other clam, octopus, oyster, sea cucumber, scallop, ghost shrimp hand, dive, or mechanical collection	637	None documented
WA shellfish aquaculture	684	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
AK/WA/OR/CA commercial passenger fishing vessel	>7,000 (2,702 AK)	Killer whale, stock unknown Steller sea lion, Eastern U.S. Steller sea lion, Western U.S.
HI charter vessel	114	None documented
LIVE FINFISH/SHELLFISH FISHERIES:		
CA nearshore finfish live trap/hook-and-line	93	None documented

List of Abbreviations and Symbols Used in Table 1: AK - Alaska; CA - California; GOA - Gulf of Alaska; HI - Hawaii; OR - Oregon; WA - Washington; [1] Fishery classified based on serious injuries and mortalities of this stock, which are greater than 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] Fishery classified by analogy; * Fishery has an associated high seas component listed in Table 3; ^ The list of marine mammal species or stocks killed or injured in this fishery is identical to the list of species or stocks killed or injured in high seas component of the fishery, minus species or stocks have geographic ranges exclusively on the high seas. The species or stocks are found, and the fishery remains the same, on both sides of the EEZ boundary. Therefore, the EEZ components of these fisheries pose the same risk to marine mammals as the components operating on the high seas.

Table 2 - List of Fisheries -- Commercial Fisheries in the Atlantic Ocean, Gulf of Mexico, and Caribbean

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
CATEGORY I		
GILLNET FISHERIES:		
Mid-Atlantic gillnet	6,402	Bottlenose dolphin, Northern Migratory coastal[1] Bottlenose dolphin, Southern Migratory coastal[1] Bottlenose dolphin, Northern NC estuarine system[1] Bottlenose dolphin, Southern NC estuarine system[1] Bottlenose dolphin, WNA offshore Common dolphin, WNA Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Humpback whale, Gulf of Maine Long-finned pilot whale, WNA Minke whale, Canadian east coast Short-finned pilot whale, WNA White-sided dolphin, WNA
Northeast sink gillnet	3,828	Bottlenose dolphin, WNA offshore Common dolphin, WNA Fin whale, WNA Gray seal, WNA Harbor porpoise, GME/BF[1] Harbor seal, WNA Harp seal, WNA Hooded seal, WNA Humpback whale, Gulf of Maine Minke whale, Canadian east coast North Atlantic right whale, WNA Risso's dolphin, WNA White-sided dolphin, WNA
TRAP/POT FISHERIES:		
Northeast/Mid-Atlantic American lobster trap/pot	11,767	Harbor seal, WNA Humpback whale, Gulf of Maine Minke whale, Canadian east coast North Atlantic right whale, WNA[1]

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
LONGLINE FISHERIES:		
Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline *	94	Atlantic spotted dolphin, GMX continental and oceanic Atlantic spotted dolphin, WNA Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, Northern GMX continental shelf Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Gervais beaked whale, GMX oceanic Killer whale, GMX oceanic Long-finned pilot whale, WNA[1] Mesoplodon beaked whale, WNA Northern bottlenose whale, WNA Pantropical spotted dolphin, Northern GMX Pantropical spotted dolphin, WNA Risso's dolphin, Northern GMX Risso's dolphin, WNA Short-finned pilot whale, Northern GMX Short-finned pilot whale, WNA[1] Sperm whale, GMX oceanic
CATEGORY II		
GILLNET FISHERIES:		
Chesapeake Bay inshore gillnet[2]	3,328	None documented in the most recent 5 years of data
Gulf of Mexico gillnet[2]	724	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, and estuarine Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal
NC inshore gillnet	2,250	Bottlenose dolphin, Northern NC estuarine system[1] Bottlenose dolphin, Southern NC estuarine system[1]
Northeast anchored float gillnet[2]	414	Harbor seal, WNA Humpback whale, Gulf of Maine White-sided dolphin, WNA
Northeast drift gillnet[2]	414	None documented
Southeast Atlantic gillnet[2]	779	Bottlenose dolphin, Southern Migratory coastal Bottlenose dolphin, SC/GA coastal Bottlenose dolphin, Central FL coastal Bottlenose dolphin, Northern FL coastal
Southeastern U.S. Atlantic shark gillnet	30	Atlantic spotted dolphin, WNA Bottlenose dolphin, Central FL coastal[1] Bottlenose dolphin, Northern FL coastal North Atlantic right whale, WNA

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
TRAWL FISHERIES		
Mid-Atlantic mid-water trawl (including pair trawl)	669	Bottlenose dolphin, WNA offshore Common dolphin, WNA Long-finned pilot whale, WNA Risso's dolphin, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA[1]
Mid-Atlantic bottom trawl	1,388	Bottlenose dolphin, WNA offshore Common dolphin, WNA[1] Harbor seal, WNA Long-finned pilot whale, WNA[1] Risso's dolphin, WNA[1] Short-finned pilot whale, WNA[1] White-sided dolphin, WNA
Northeast mid-water trawl (including pair trawl)	887	Harbor seal, WNA Long-finned pilot whale, WNA[1] Short-finned pilot whale, WNA[1] White-sided dolphin, WNA
Northeast bottom trawl	2,584	Bottlenose dolphin, WNA offshore Common dolphin, WNA Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Harp seal, WNA Long-finned pilot whale, WNA Short-finned pilot whale, WNA White-sided dolphin, WNA[1]
Southeastern U.S. Atlantic, Gulf of Mexico shrimp trawl	4,950	Atlantic spotted dolphin, GMX continental and oceanic Bottlenose dolphin, SC/GA coastal[1] Bottlenose dolphin, Eastern GMX coastal[1] Bottlenose dolphin, GMX continental shelf Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal[1] Bottlenose dolphin, GMX bay, sound, estuarine[1] West Indian manatee, FL
TRAP/POT FISHERIES:		
Southeastern U.S. Atlantic, Gulf of Mexico stone crab trap/pot[2]	1,282	Bottlenose dolphin, Biscayne Bay estuarine Bottlenose dolphin, Central FL coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, FL Bay Bottlenose dolphin, GMX bay, sound, estuarine (FL west coast portion) Bottlenose dolphin, Indian River Lagoon estuarine system Bottlenose dolphin, Jacksonville estuarine system Bottlenose dolphin, Northern GMX coastal

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
Atlantic mixed species trap/pot[2]	3,526	Fin whale, WNA Humpback whale, Gulf of Maine
Atlantic blue crab trap/pot	10,008	Bottlenose dolphin, Charleston estuarine system[1] Bottlenose dolphin, Indian River Lagoon estuarine system[1] Bottlenose dolphin, Jacksonville estuarine system[1] Bottlenose dolphin, SC/GA coastal[1] Bottlenose dolphin, Northern GA/Southern SC estuarine system[1] Bottlenose dolphin, Southern GA estuarine system[1] Bottlenose dolphin, Northern Migratory coastal[1] Bottlenose dolphin, Southern Migratory coastal[1] Bottlenose dolphin, Central FL coastal[1] Bottlenose dolphin, Northern FL coastal[1] Bottlenose dolphin, Northern NC estuarine system[1] Bottlenose dolphin, Southern NC estuarine system[1] West Indian manatee, FL[1]
PURSE SEINE FISHERIES:		
Gulf of Mexico menhaden purse seine	40-42	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Northern GMX coastal[1] Bottlenose dolphin, Western GMX coastal[1]
Mid-Atlantic menhaden purse seine[2]	56	Bottlenose dolphin, Northern Migratory coastal Bottlenose dolphin, Southern Migratory coastal
HAUL/BEACH SEINE FISHERIES:		
Mid-Atlantic haul/beach seine	874	Bottlenose dolphin, Northern NC estuarine system[1] Bottlenose dolphin, Northern Migratory coastal[1] Bottlenose dolphin, Southern Migratory coastal[1]
NC long haul seine	372	Bottlenose dolphin, Southern NC estuarine system Bottlenose dolphin, Northern NC estuarine system[1]
STOP NET FISHERIES:		
NC roe mullet stop net	13	Bottlenose dolphin, Southern NC estuarine system[1]
POUND NET FISHERIES:		
VA pound net	231	Bottlenose dolphin, Northern NC estuarine system Bottlenose dolphin, Northern Migratory coastal[1] Bottlenose dolphin, Southern Migratory coastal[1]
CATEGORY III		
GILLNET FISHERIES:		
Caribbean gillnet	>991	Dwarf sperm whale, WNA

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
DE River inshore gillnet	unknown	None documented in the most recent 5 years of data
Long Island Sound inshore gillnet	unknown	None documented in the most recent 5 years of data
RI, southern MA (to Monomoy Island), and NY Bight (Raritan and Lower NY Bays) inshore gillnet	unknown	None documented in the most recent 5 years of data
Southeast Atlantic inshore gillnet	unknown	None documented
TRAWL FISHERIES:		
Atlantic shellfish bottom trawl	>86	None documented
Gulf of Mexico butterfish trawl	2	Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, Northern GMX continental shelf
Gulf of Mexico mixed species trawl	20	None documented
GA cannonball jellyfish trawl	1	None documented
MARINE AQUACULTURE FISHERIES:		
Finfish aquaculture	48	Harbor seal, WNA
Shellfish aquaculture	unknown	None documented
PURSE SEINE FISHERIES:		
Gulf of Maine Atlantic herring purse seine	>6	Harbor seal, WNA Gray seal, WNA
Gulf of Maine menhaden purse seine	>2	None documented
FL West Coast sardine purse seine	10	Bottlenose dolphin, Eastern GMX coastal
U.S. Atlantic tuna purse seine *	5	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
LONGLINE/HOOK-AND-LINE FISHERIES:		
Northeast/Mid-Atlantic bottom longline/hook-and-line	>1,281	None documented in the most recent 5 years of data
Gulf of Maine, U.S. Mid-Atlantic tuna, shark swordfish hook-and-line/harpoon	>403	Humpback whale, Gulf of Maine
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean snapper-grouper and other reef fish bottom longline/hook-and-line	>5,000	Bottlenose dolphin, GMX continental shelf

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
Southeastern U.S. Atlantic, Gulf of Mexico shark bottom longline/hook-and-line	<125	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX continental shelf
Southeastern U.S. Atlantic, Gulf of Mexico, and Caribbean pelagic hook-and-line/harpoon	1,446	None documented
U.S. Atlantic, Gulf of Mexico trotline	unknown	None documented
TRAP/POT FISHERIES		
Caribbean mixed species trap/pot	>501	None documented
Caribbean spiny lobster trap/pot	>197	None documented
FL spiny lobster trap/pot	1,268	Bottlenose dolphin, Biscayne Bay estuarine Bottlenose dolphin, Central FL coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, FL Bay estuarine
Gulf of Mexico blue crab trap/pot	4,113	Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, GMX bay, sound, estuarine West Indian manatee, FL
Gulf of Mexico mixed species trap/pot	unknown	None documented
Southeastern U.S. Atlantic, Gulf of Mexico golden crab trap/pot	10	None documented
U.S. Mid-Atlantic eel trap/pot	unknown	None documented
STOP SEINE/WEIR/POUND NET/FLOATING TRAP FISHERIES:		
Gulf of Maine herring and Atlantic mackerel stop seine/weir	unknown	Gray seal, WNA Harbor porpoise, GME/BF Harbor seal, WNA Minke whale, Canadian east coast White-sided dolphin, WNA
U.S. Mid-Atlantic crab stop seine/weir	2,600	None documented
U.S. Mid-Atlantic mixed species stop seine/weir/pound net (except the NC roe mullet stop net)	unknown	Bottlenose dolphin, Northern NC estuarine system
RI floating trap	9	None documented
DREDGE FISHERIES:		

Fishery Description	Estimated # of vessels/ persons	Marine mammal species and stocks incidentally killed or injured
Gulf of Maine mussel dredge	unknown	None documented
Gulf of Maine, U.S. Mid-Atlantic sea scallop dredge	>230	None documented
U.S. Mid-Atlantic/Gulf of Mexico oyster dredge	7,000	None documented
U.S. Mid-Atlantic offshore surf clam and quahog dredge	unknown	None documented
HAUL/BEACH SEINE FISHERIES:		
Caribbean haul/beach seine	15	None documented in the most recent 5 years of data
Gulf of Mexico haul/beach seine	unknown	None documented
Southeastern U.S. Atlantic haul/beach seine	25	None documented
DIVE, HAND/MECHANICAL COLLECTION FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean shellfish dive, hand/mechanical collection	20,000	None documented
Gulf of Maine urchin dive, hand/mechanical collection	unknown	None documented
Gulf of Mexico, Southeast Atlantic, Mid-Atlantic, and Caribbean cast net	unknown	None documented
COMMERCIAL PASSENGER FISHING VESSEL (CHARTER BOAT) FISHERIES:		
Atlantic Ocean, Gulf of Mexico, Caribbean commercial passenger fishing vessel	4,000	Bottlenose dolphin, Eastern GMX coastal Bottlenose dolphin, Northern GMX coastal Bottlenose dolphin, Western GMX coastal Bottlenose dolphin, Biscayne Bay estuarine Bottlenose dolphin, GMX bay, sound, estuarine Bottlenose dolphin, Indian River Lagoon estuarine system Bottlenose dolphin, Southern NC estuarine system

List of Abbreviations and Symbols Used in Table 2: DE - Delaware; FL - Florida; GA - Georgia; GME/BF - Gulf of Maine/Bay of Fundy; GMX - Gulf of Mexico; MA - Massachusetts; NC - North Carolina; SC- South Carolina; VA - Virginia; WNA - Western North Atlantic; [1] Fishery classified based on serious injuries and mortalities of this stock, which are greater than 50 percent (Category I) or greater than 1 percent and less than 50 percent (Category II) of the stock's PBR; [2] Fishery classified by analogy; * Fishery has an associated high seas component listed in Table 3.

Table 3 - List of Fisheries -- Commercial Fisheries on the High Seas

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed or injured
Category I		
LONGLINE FISHERIES:		
Atlantic Highly Migratory Species * +	81	Atlantic spotted dolphin, WNA Bottlenose dolphin, Northern GMX oceanic Bottlenose dolphin, WNA offshore Common dolphin, WNA Cuvier's beaked whale, WNA Long-finned pilot whale, WNA Mesoplodon beaked whale, WNA Pygmy sperm whale, WNA Risso's dolphin, WNA Short-finned pilot whale, WNA
Western Pacific Pelagic (HI Deep-set component) * ^+	124	Blainville's beaked whale, HI Blainville's beaked whale, unknown Bottlenose dolphin, HI Pelagic Bottlenose dolphin, unknown False killer whale, HI Pelagic False killer whale, unknown Humpback whale, Central North Pacific Pantropical spotted dolphin, HI Pantropical spotted dolphin, unknown Risso's dolphin, HI Risso's dolphin, unknown Short-finned pilot whale, HI Short-finned pilot whale, unknown Striped dolphin, HI Striped dolphin, unknown
Category II		
DRIFT GILLNET FISHERIES:		
Atlantic Highly Migratory Species	1	Undetermined
Pacific Highly Migratory Species * ^	3	Long-beaked common dolphin, CA Humpback whale, CA/OR/WA Northern right-whale dolphin, CA/OR/WA Pacific white-sided dolphin, CA/OR/WA Risso's dolphin, CA/OR/WA Short-beaked common dolphin, CA/OR/WA
TRAWL FISHERIES:		
Atlantic Highly Migratory Species **	3	Undetermined
CCAMLR	0	Antarctic fur seal

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed or injured
Western Pacific Pelagic	1	Undetermined
PURSE SEINE FISHERIES:		
South Pacific Tuna Fisheries	33	Undetermined
Western Pacific Pelagic	3	Undetermined
POT VESSEL FISHERIES:		
Pacific Highly Migratory Species **	3	Undetermined
South Pacific Albacore Troll	3	Undetermined
Western Pacific Pelagic	3	Undetermined
LONGLINE FISHERIES:		
CCAMLR	0	None documented
South Pacific Albacore Troll	11	Undetermined
South Pacific Tuna Fisheries **	11	Undetermined
Western Pacific Pelagic (HI Shallow-set component) * ^+	28	Bottlenose dolphin, HI Pelagic Bottlenose dolphin, unknown Bryde's whale, HI Bryde's whale, unknown Humpback whale, Central North Pacific Kogia sp. whale (Pygmy or dwarf sperm whale), HI Kogia sp. whale (Pygmy or dwarf sperm whale), unknown Risso's dolphin, HI Risso's dolphin, unknown Striped dolphin, HI Striped dolphin, unknown
HANDLINE/POLE AND LINE FISHERIES:		
Atlantic Highly Migratory Species	3	Undetermined
Pacific Highly Migratory Species	30	Undetermined
South Pacific Albacore Troll	8	Undetermined
Western Pacific Pelagic	8	Undetermined
TROLL FISHERIES:		
Atlantic Highly Migratory Species	7	Undetermined
South Pacific Albacore Troll	51	Undetermined
South Pacific Tuna Fisheries **	3	Undetermined
Western Pacific Pelagic	32	Undetermined
LINERS NEI FISHERIES:		

Fishery Description	# of HSFCA permits	Marine mammal species and stocks incidentally killed or injured
Pacific Highly Migratory Species **	1	Undetermined
South Pacific Albacore Troll	1	Undetermined
Western Pacific Pelagic	1	Undetermined
FACTORY MOTHERSHIP FISHERIES:		
Western Pacific Pelagic	1	Undetermined
MULTIPURPOSE VESSELS NEI FISHERIES:		
Atlantic Highly Migratory Species	1	Undetermined
Pacific Highly Migratory Species **	5	Undetermined
South Pacific Albacore Troll	4	Undetermined
Western Pacific Pelagic	4	Undetermined
Category III		
LONGLINE FISHERIES:		
Pacific Highly Migratory Species * +	84	None documented in the most recent 5 years of data
PURSE SEINE FISHERIES		
Atlantic Highly Migratory Species *^	0	Long-finned pilot whale, WNA Short-finned pilot whale, WNA
Pacific Highly Migratory Species * ^	7	None documented
TROLL FISHERIES:		
Pacific Highly Migratory Species *	258	None documented

List of Terms, Abbreviations, and Symbols Used in Table 3:
GMX- Gulf of Mexico; NEI - Not Elsewhere Identified; WNA - Western North Atlantic.
* Fishery is an extension/component of an existing fishery operating within U.S. waters listed in Table 1 or 2. The number of permits listed in Table 3 represents only the number of permits for the high seas component of the fishery.
** These gear types are not authorized under the Pacific HMS FMP (2004), the Atlantic HMS FMP (2006), or without a South Pacific Tuna Treaty license (in the case of the South Pacific Tuna fisheries). Because HSFCA permits are valid for five years, permits obtained in past years exist in the HSFCA permit database for gear types that are now unauthorized. Therefore, while HSFCA permits exist for these gear types, it does not represent effort. In order to land fish species, fishers must be using an authorized gear type. Once these permits for unauthorized gear types expire, the permit-holder will be required to obtain a permit for an authorized gear type.
+ The marine mammal species or stocks listed as killed or injured in this fishery has been observed taken by this fishery on the high seas.
^ The list of marine mammal species or stocks killed or injured in this fishery is identical to the list of marine mammal species or stocks killed or injured in U.S. waters component of the fishery, minus species or stocks that have geographic ranges exclusively in coastal waters, because the marine mammal species or stocks are also found on the high seas and the fishery remains the same on both sides of the EEZ boundary. Therefore, the high seas components of these fisheries pose the same risk to marine mammals as the components of these fisheries operating in U.S. waters.

Table 4 - Fisheries Affected by Take Reduction Teams and Plans

Take Reduction Plans	Affected Fisheries
Atlantic Large Whale Take Reduction Plan (ALWTRP) - 50 CFR 229.32	Category I Mid-Atlantic gillnet Northeast/Mid-Atlantic American lobster trap/pot Northeast sink gillnet Category II Atlantic blue crab trap/pot Atlantic mixed species trap/pot Northeast anchored float gillnet Northeast drift gillnet Southeast Atlantic gillnet Southeastern U.S. Atlantic shark gillnet* Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot^
Bottlenose Dolphin Take Reduction Plan (BDTRP) - 50 CFR 229.35	Category I Mid-Atlantic gillnet Category II Atlantic blue crab trap/pot Mid-Atlantic haul/beach seine Mid-Atlantic menhaden purse seine NC inshore gillnet NC long haul seine NC roe mullet stop net Southeast Atlantic gillnet Southeastern U.S. Atlantic shark gillnet Southeastern, U.S. Atlantic, Gulf of Mexico stone crab trap/pot^ VA pound net
Harbor Porpoise Take Reduction Plan (HPTRP) - 50 CFR 229.33 (New England) and 229.34 (Mid-Atlantic)	Category I Mid-Atlantic gillnet Northeast sink gillnet
Pelagic Longline Take Reduction Plan (PLTRP) – 50 CFR 229.36	Category I Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline
Pacific Offshore Cetacean Take Reduction Plan (POCTRP) - 50 CFR 229.31	Category II CA thresher shark/swordfish drift gillnet (≥14 in mesh)
Take Reduction Teams	Affected Fisheries
Atlantic Trawl Gear Take Reduction Team (ATGTRT)	Category II Mid-Atlantic bottom trawl Mid-Atlantic mid-water trawl (including pair trawl) Northeast bottom trawl Northeast mid-water trawl (including pair trawl)
False Killer Whale Take Reduction Team (FKWTRT)	Category I HI deep-set (tuna target) longline/set line Category II HI shallow-set (swordfish target) longline/set line

* Only applicable to the portion of the fishery operating in U.S. waters; ^ Only applicable to the portion of the fishery operating in the Atlantic Ocean.

BILLING CODE 3510–22–C

Classification

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. The factual basis for this certification was published with the proposed rule and is not repeated here. No comments were received regarding the economic impact of this rule. As a result, a final regulatory flexibility analysis is not required, and none was prepared.

This final rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collection of information for the

registration of individuals under the MMPA has been approved by the Office of Management and Budget (OMB) under OMB control number 0648–0293 (0.15 hours per report for new registrants and 0.09 hours per report for renewals). The requirement for reporting marine mammal injuries or mortalities has been approved by OMB under OMB control number 0648–0292 (0.15 hours per report). These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these reporting burden estimates or any other aspect of the collections of information, including suggestions for reducing burden, to NMFS and OMB (see **ADDRESSES** and **SUPPLEMENTARY INFORMATION**).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This final rule has been determined to be not significant for the purposes of Executive Order 12866.

An environmental assessment (EA) was prepared under the National Environmental Policy Act (NEPA) for regulations to implement section 118 of the MMPA in June 1995. NMFS revised that EA relative to classifying U.S. commercial fisheries on the LOF in December 2005. Both the 1995 EA and the 2005 EA concluded that implementation of MMPA section 118 regulations would not have a significant impact on the human environment. This final rule would not make any significant change in the management of reclassified fisheries, and therefore, this final rule is not expected to change the analysis or conclusion of the 2005 EA. The Council of Environmental Quality (CEQ) recommends agencies review EAs every five years; therefore, NMFS reviewed the 2005 EA in 2009. NMFS concluded that, because there have been no changes to the process used to develop the LOF and implement section 118 of the MMPA (including no new alternatives and no additional or new impacts on the human environment), there was no need to update the 2005 EA at that time. If NMFS takes a management action, for example, through the development of a TRP, NMFS would first prepare an environmental document, as required under NEPA, specific to that action. NMFS will next review the EA to determine if updates are necessary in 2014.

This final rule would not affect species listed as threatened or endangered under the Endangered Species Act (ESA) or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this final rule will not affect the conclusions of those opinions. The classification of fisheries on the LOF is not considered to be a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, through the development of a TRP, NMFS would conduct consultation under ESA section 7 for that action.

This final rule would have no adverse impacts on marine mammals and may have a positive impact on marine mammals by improving knowledge of marine mammals and the fisheries interacting with marine mammals through information collected from observer programs, stranding and sighting data, or take reduction teams.

This final rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

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Dated: November 21, 2011.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2011–30607 Filed 11–28–11; 8:45 am]

BILLING CODE 3510–22–P

FEDERAL REGISTER

Vol. 76 Tuesday,
No. 229 November 29, 2011

Part VI

Environmental Protection Agency

40 CFR Part 52
Approval and Promulgation of Air Quality Implementation Plans; Maine; Regional Haze; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2010–1043; A–1–FRL–9496–5]

Approval and Promulgation of Air Quality Implementation Plans; Maine; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing approval of a revision to the Maine State Implementation Plan (SIP) submitted by the Maine Department of Environmental Protection (Maine DEP) on December 9, 2010, with supplemental submittals on September 14, 2011 and November 9, 2011, that addresses regional haze for the first planning period from 2008 through 2018. This revision addresses the requirements of the Clean Air Act (CAA) and EPA's rules that require States to prevent any future, and remedy any existing, manmade impairment of visibility in mandatory Class I areas caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program''). States are required to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas.

DATES: Written comments must be received on or before December 29, 2011.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R01–OAR–2010–1043 by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: arnold.anne@epa.gov.*

3. *Fax:* (617) 918–0047.

4. *Mail:* ''Docket Identification Number EPA–R01–OAR–2010–1043 Anne Arnold, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (Mail code OEP05–2), Boston, MA 02109–3912.

5. *Hand Delivery or Courier.* Deliver your comments to: Anne Arnold, Manager, Air Quality Planning Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, (mail code OEP05–2), Boston, MA 02109–3912. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R01–OAR–2010–1043. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *http://www.regulations.gov,* or email, information that you consider to be CBI or otherwise protected. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *http://www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, Office of Ecosystem Protection, Air Quality Planning Unit, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that if at all possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding legal holidays.

In addition, copies of the state submittal are also available for public inspection during normal business hours, by appointment at the Bureau of Air Quality Control, Department of Environmental Protection, First Floor of the Tyson Building, Augusta Mental Health Institute Complex, Augusta, ME 04333–0017.

FOR FURTHER INFORMATION CONTACT: Anne McWilliams, Air Quality Unit, U.S. Environmental Protection Agency, EPA New England Regional Office, 5 Post Office Square—Suite 100, (Mail Code OEP05–02), Boston, MA 02109–3912, telephone number (617) 918–1697, fax number (617) 918–0697, email *mcwilliams.anne@epa.gov.*

SUPPLEMENTARY INFORMATION:

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Throughout this document, wherever ''we,'' ''us,'' or ''our'' is used, we mean the EPA.

I. What is the background for EPA's proposed action?

A. The Regional Haze Problem

Regional haze is visibility impairment that is produced by a multitude of sources and activities which are located across a broad geographic area and emit fine particles and their precursors (*e.g.,* sulfur dioxide, nitrogen oxides, and in some cases, ammonia and volatile organic compounds). Fine particle precursors react in the atmosphere to form fine particulate matter ($PM_{2.5}$) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust), which also impair visibility by scattering and absorbing light. Visibility impairment reduces the clarity, color, and visible distance that one can see. $PM_{2.5}$ can also cause serious health effects and mortality in humans and contributes to environmental effects such as acid deposition.

Data from the existing visibility monitoring network, the ''Interagency Monitoring of Protected Visual Environments'' (IMPROVE) monitoring network, show that visibility impairment caused by air pollution occurs virtually all the time at most national park and wilderness areas. The average visual range in many Class I areas (*i.e.,* national parks and memorial parks, wilderness areas, and international parks meeting certain size criteria) in the Western United States is 100–150 kilometers, or about one-half to two-thirds of the visual range that would exist without anthropogenic air pollution. In most of the eastern Class I areas of the United States, the average visual range is less than 30 kilometers, or about one-fifth of the visual range that would exist under estimated natural conditions. (64 FR 35715, (July 1, 1999))

B. Background Information

In section 169A(a)(1) of the 1977 Amendments to the CAA, Congress created a program for protecting visibility in the nation's national parks and wilderness areas. This section of the CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory Class I Federal areas [1] which impairment results from manmade air pollution.'' On December 2, 1980, EPA promulgated regulations to address visibility impairment in Class I areas that is ''reasonably attributable'' to a single source or small group of sources, *i.e.,* ''reasonably attributable visibility impairment'' (RAVI), (45 FR 80084). These regulations represented the first phase in addressing visibility impairment. EPA deferred action on regional haze that emanates from a variety of sources until monitoring, modeling and scientific knowledge about the relationships between pollutants and visibility impairment were improved.

Congress added section 169B to the CAA in 1990 to address regional haze issues. In 1993, the National Academy of Sciences determined that current knowledge of regional haze was adequate and that existing technologies were available to protect visibility. (64 FR 35714, 35714 (July 1, 1999)). EPA promulgated a rule to address regional haze on July 1, 1999 (64 FR 35714), the Regional Haze Rule. The Regional Haze Rule revised the existing visibility regulations to integrate into the regulation provisions addressing regional haze impairment and established a comprehensive visibility protection program for Class I areas. The requirements for regional haze, found at 40 CFR 51.308 and 51.309, are included in EPA's visibility protection regulations at 40 CFR 51.300–309. Some of the main elements of the regional haze requirements are summarized in section II. The requirement to submit a regional haze SIP applies to all 50 States, the District of Columbia and the Virgin Islands. Section 51.308(b) requires States to submit the first implementation plan addressing regional haze visibility impairment no later than December 17, 2007. On January 15, 2009, EPA found that 37 States, the District of Columbia and the U.S. Virgin Islands failed to submit this required implementation plan. (74 FR 2392, (Jan. 15, 2009)). In particular, EPA found that Maine failed to submit a plan that met the requirements of 40 CFR 51.308. (74 FR 2393). On December 6, 2010, the Air Bureau of the Maine DEP submitted revisions to the Maine SIP to address regional haze as required by 40 CFR 51.308. Supplemental documentation was submitted on September 14, 2011 and November 9, 2011. EPA has reviewed Maine's submittal and finds that it is consistent with the requirements of 40 CFR 51.308 outlined in section II.

C. Roles of Agencies in Addressing Regional Haze

Successful implementation of the regional haze program will require long-term regional coordination among States, Tribal governments and various federal agencies. As noted above, pollution affecting the air quality in Class I areas can be transported over long distances, even hundreds of kilometers. Therefore, to effectively address the problem of visibility impairment in Class I areas, States need to develop strategies in coordination with one another, taking into account the effect of emissions from one jurisdiction on the air quality in another.

Because the pollutants that lead to regional haze can originate from sources located across broad geographic areas, EPA has encouraged the States and Tribes across the United States to address visibility impairment from a regional perspective. Five regional planning organizations (RPOs) were developed to address regional haze and related issues. The RPOs first evaluated

[1] Areas designated as mandatory Class I Federal areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977 (42 U.S.C. 7472(a)). In accordance with section 169A of the CAA, EPA, in consultation with the Department of Interior, promulgated a list of 156 areas where visibility is identified as an important value (44 FR 69122, November 30, 1979). The extent of a mandatory Class I area includes subsequent changes in boundaries, such as park expansions (42 U.S.C. 7472(a)). Although states and Tribes may designate as Class I additional areas which they consider to have visibility as an important value, the requirements of the visibility program set forth in section 169A of the CAA apply only to ''mandatory Class I Federal areas.'' Each mandatory Class I Federal area is the responsibility of a ''Federal Land Manager'' (FLM). (42 U.S.C. 7602(i)). When we use the term ''Class I area'' in this action, we mean a ''mandatory Class I Federal area.''

technical information to better understand how their States and Tribes impact Class I areas across the country, and then pursued the development of regional strategies to reduce emissions of $PM_{2.5}$ and other pollutants leading to regional haze.

The Mid-Atlantic/Northeast Visibility Union (MANE–VU) RPO is a collaborative effort of state governments, Tribal governments, and various federal agencies established to initiate and coordinate activities associated with the management of regional haze, visibility and other air quality issues in the Northeastern United States. Member state and Tribal governments include: Connecticut, Delaware, the District of Columbia, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Penobscot Indian Nation, Rhode Island, and Vermont.

II. What are the requirements for regional haze SIPs?

A. The CAA and the Regional Haze Rule (RHR)

Regional haze SIPs must assure reasonable progress towards the national goal of achieving natural visibility conditions in Class I areas. Section 169A of the CAA and EPA's implementing regulations require States to establish long-term strategies for making reasonable progress toward meeting this goal. Implementation plans must also give specific attention to certain stationary sources that were in existence on August 7, 1977, but were not in operation before August 7, 1962, and require these sources, where appropriate, to install Best Available Retrofit Technology controls for the purpose of eliminating or reducing visibility impairment. The specific regional haze SIP requirements are discussed in further detail below.

B. Determination of Baseline, Natural, and Current Visibility Conditions

The RHR establishes the deciview (dv) as the principal metric for measuring visibility. This visibility metric expresses uniform changes in haziness in terms of common increments across the entire range of visibility conditions, from pristine to extremely hazy conditions. Visibility is determined by measuring the visual range (or deciview), which is the greatest distance, in kilometers or miles, at which a dark object can be viewed against the sky. The deciview is a useful measure for tracking progress in improving visibility, because each deciview change is an equal incremental change in visibility perceived by the human eye. Most people can detect a change in visibility at one deciview.[2]

The deciview is used to: Express Reasonable Progress Goals (RPGs) (which are interim visibility goals towards meeting the national visibility goal); define baseline, current, and natural conditions; and track changes in visibility. The regional haze SIPs must contain measures that ensure ''reasonable progress'' toward the national goal of preventing and remedying visibility impairment in Class I areas caused by manmade air pollution by reducing anthropogenic emissions that cause regional haze. The national goal is a return to natural conditions, *i.e.,* manmade sources of air pollution would no longer impair visibility in Class I areas.

To track changes in visibility over time at each of the 156 Class I areas covered by the visibility program and as part of the process for determining reasonable progress, States must calculate the degree of existing visibility impairment at each Class I area within the state at the time of each regional haze SIP submittal and periodically review progress every five years midway through each 10-year planning period. To do this, the RHR requires States to determine the degree of impairment (in deciviews) for the average of the 20 percent least impaired (''best'') and 20 percent most impaired (''worst'') visibility days over a specified time period at each of their Class I areas. In addition, States must also develop an estimate of natural visibility conditions for the purposes of comparing progress toward the national goal. Natural visibility is determined by estimating the natural concentrations of pollutants that cause visibility impairment and then calculating total light extinction based on those estimates. EPA has provided guidance to States regarding how to calculate baseline, natural and current visibility conditions in documents titled, *Guidance For Estimating Natural Visibility Conditions Under the Regional Haze Rule,* September 2003, (EPA–454/B–03–005), available at *www.epa.gov/ttncaaa1/t1/memoranda/rh_envcurhr_gd.pdf* [hereinafter *EPA's 2003 Natural Visibility Guidance*], and *Guidance for Tracking Progress Under the Regional Haze Rule,* September 2003 (EPA–454/B–03–004), available at *www.epa.gov/ttncaaa1/t1/memoranda/rh_tpurhr_gd.pdf* [hereinafter *EPA's 2003 Tracking Progress Guidance*].

[2] The preamble to the RHR provides additional details about the deciview (64 FR 35714, 35725 (July 1, 1999)).

For the first regional haze SIPs that were due by December 17, 2007, ''baseline visibility conditions'' were the starting points for assessing ''current'' visibility impairment. Baseline visibility conditions represent the degree of impairment for the 20 percent least impaired days and 20 percent most impaired days at the time the regional haze program was established. Using monitoring data from 2000 through 2004, States are required to calculate the average degree of visibility impairment for each Class I area within the state, based on the average of annual values over the five year period. The comparison of initial baseline visibility conditions to natural visibility conditions indicates the amount of improvement necessary to attain natural visibility, while the future comparison of baseline conditions to the then current conditions will indicate the amount of progress made. In general, the 2000–2004 baseline period is considered the time from which improvement in visibility is measured.

C. Determination of Reasonable Progress Goals (RPGs)

The vehicle for ensuring continuing progress towards achieving the natural visibility goal is the submission of a series of regional haze SIPs from the States that establish RPGs for Class I areas for each (approximately) 10-year planning period. The RHR does not mandate specific milestones or rates of progress, but instead calls for States to establish goals that provide for ''reasonable progress'' toward achieving natural (*i.e.,* ''background'') visibility conditions for their Class I areas. In setting RPGs, States must provide for an improvement in visibility for the most impaired days over the (approximately) 10-year period of the SIP, and ensure no degradation in visibility for the least impaired days over the same period.

States have significant discretion in establishing RPGs, but are required to consider the following factors established in the CAA and in EPA's RHR: (1) The costs of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. States must demonstrate in their SIPs how these factors are considered when selecting the RPGs for the best and worst days for each applicable Class I area. (40 CFR 51.308(d)(1)(i)(A)). States have considerable flexibility in how they take these factors into consideration, as noted in EPA's *Guidance for Setting Reasonable Progress Goals under the Regional Haze Program,* (''EPA's

Reasonable Progress Guidance''), July 1, 2007, memorandum from William L. Wehrum, Acting Assistant Administrator for Air and Radiation, to EPA Regional Administrators, EPA Regions 1–10 (pp. 4–2, 5–1). In setting the RPGs, States must also consider the rate of progress needed to reach natural visibility conditions by 2064 (referred to as the ''uniform rate of progress'' or the ''glide path'') and the emission reduction measures needed to achieve that rate of progress over the 10-year period of the SIP. The year 2064 represents a rate of progress which States are to use for analytical comparison to the amount of progress they expect to achieve. In setting RPGs, each state with one or more Class I areas (''Class I State'') must also consult with potentially ''contributing states,'' *i.e.,* other nearby states with emission sources that may be affecting visibility impairment at the Class I State's areas. (40 CFR 51.308(d)(1)(iv)).

D. Best Available Retrofit Technology (BART)

Section 169A of the CAA directs States to evaluate the use of retrofit controls at certain larger, often uncontrolled, older stationary sources in order to address visibility impacts from these sources. Specifically, the CAA requires States to revise their SIPs to contain such measures as may be necessary to make reasonable progress towards the natural visibility goal, including a requirement that certain categories of existing stationary sources built between 1962 and 1977 procure, install, and operate the ''Best Available Retrofit Technology'' as determined by the state.(CAA 169A(b)(2)a)).[3] States are directed to conduct BART determinations for such sources that may be anticipated to cause or contribute to any visibility impairment in a Class I area. Rather than requiring source-specific BART controls, States also have the flexibility to adopt an emissions trading program or other alternative program as long as the alternative provides greater reasonable progress towards improving visibility than BART.

On July 6, 2005, EPA published the *Guidelines for BART Determinations Under the Regional Haze Rule* at Appendix Y to 40 CFR part 51 (hereinafter referred to as the ''BART Guidelines'') to assist States in determining which of their sources should be subject to the BART requirements and in determining appropriate emission limits for each applicable source. In making a BART applicability determination for a fossil fuel-fired electric generating plant with a total generating capacity in excess of 750 megawatts (MW), a state must use the approach set forth in the BART Guidelines. A state is encouraged, but not required, to follow the BART Guidelines in making BART determinations for other types of sources.

States must address all visibility impairing pollutants emitted by a source in the BART determination process. The most significant visibility impairing pollutants are sulfur dioxide (SO_2), nitrogen oxides (NO_X), and particulate matter (PM). EPA has stated that States should use their best judgment in determining whether volatile organic compounds (VOCs), or ammonia (NH_3) and ammonia compounds impair visibility in Class I areas.

The RPOs provided air quality modeling to the States to help them in determining whether potential BART sources can be reasonably expected to cause or contribute to visibility impairment in a Class I area. Under the BART Guidelines, States may select an exemption threshold value for their BART modeling, below which a BART eligible source would not be expected to cause or contribute to visibility impairment in any Class I area. The state must document this exemption threshold value in the SIP and must state the basis for its selection of that value. Any source with emissions that model above the threshold value would be subject to a BART determination review. The BART Guidelines acknowledge varying circumstances affecting different Class I areas. States should consider the number of emission sources affecting the Class I areas at issue and the magnitude of the individual sources' impacts. Any exemption threshold set by the state should not be higher than 0.5 deciviews (70 FR 39161, (July 6, 2005)).

In their SIPs, States must identify potential BART sources, described as ''BART-eligible sources'' in the RHR, and document their BART control determination analyses. The term ''BART-eligible source'' used in the BART Guidelines means the collection of individual emission units at a facility that together comprises the BART-eligible source. (70 FR 39161, (July 6, 2005)). In making BART determinations, section 169A(g)(2) of the CAA requires that States consider the following factors: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology. States are free to determine the weight and significance to be assigned to each factor. (70 FR 39170, (July 6, 2005)).

A regional haze SIP must include source-specific BART emission limits and compliance schedules for each source subject to BART. Once a state has made its BART determination, the BART controls must be installed and in operation as expeditiously as practicable, but no later than five years after the date of EPA approval of the regional haze SIP, as required in the CAA (section 169(g)(4)) and in the RHR (40 CFR 51.308(e)(1)(iv)). In addition to what is required by the RHR, general SIP requirements mandate that the SIP must also include all regulatory requirements related to monitoring, recordkeeping, and reporting for the BART controls on the source. States have the flexibility to choose the type of control measures they will use to meet the requirements of BART.

E. Long-Term Strategy (LTS)

Section 51.308(d)(3) of the RHR requires that States include a LTS in their SIPs. The LTS is the compilation of all control measures a state will use to meet any applicable RPGs. The LTS must include ''enforceable emissions limitations, compliance schedules, and other measures as necessary to achieve the reasonable progress goals'' for all Class I areas within, or affected by emissions from, the state. (40 CFR 51.308(d)(3)).

When a state's emissions are reasonably anticipated to cause or contribute to visibility impairment in a Class I area located in another state, the RHR requires the impacted state to coordinate with the contributing States in order to develop coordinated emissions management strategies. (40 CFR 51.308(d)(3)(i)). In such cases, the contributing state must demonstrate that it has included in its SIP all measures necessary to obtain its share of the emission reductions needed to meet the RPGs for the Class I area. The RPOs have provided forums for significant interstate consultation, but additional consultations between States may be required to sufficiently address interstate visibility issues. This is especially true where two States belong to different RPOs.

States should consider all types of anthropogenic sources of visibility impairment in developing their LTS, including stationary, minor, mobile, and

[3] The set of ''major stationary sources'' potentially subject to BART are listed in CAA section 169A(g)(7).

area sources. At a minimum, States must describe how each of the seven factors listed below is taken into account in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address RAVI; (2) measures to mitigate the impacts of construction activities; (3) emissions limitations and schedules for compliance to achieve the RPG; (4) source retirement and replacement schedules; (5) smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the state for these purposes; (6) enforceability of emissions limitations and control measures; (7) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. (40 CFR 51.308(d)(3)(v)).

F. Coordinating Regional Haze and Reasonably Attributable Visibility Impairment (RAVI) LTS

As part of the RHR, EPA revised 40 CFR 51.306(c) regarding the LTS for RAVI to require that the RAVI plan must provide for a periodic review and SIP revision not less frequently than every three years until the date of submission of the state's first plan addressing regional haze visibility impairment, which was due December 17, 2007, in accordance with 51.308(b) and (c). On or before this date, the state must revise its plan to provide for review and revision of a coordinated LTS for addressing reasonably attributable and regional haze visibility impairment, and the state must submit the first such coordinated LTS with its first regional haze SIP. Future coordinated LTS's, and periodic progress reports evaluating progress towards RPGs, must be submitted consistent with the schedule for SIP submission and periodic progress reports set forth in 40 CFR 51.308(f) and 51.308(g), respectively. The periodic reviews of a state's LTS must report on both regional haze and RAVI impairment and must be submitted to EPA as a SIP revision.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the RHR includes the requirement for a monitoring strategy for measuring, characterizing, and reporting of regional haze visibility impairment that is representative of all mandatory Class I Federal areas within the state. The strategy must be coordinated with the monitoring strategy required in section 51.305 for RAVI. Compliance with this requirement may be met through participation in the IMPROVE network. The monitoring strategy is due with the first regional haze SIP, and it must be reviewed every five years. The monitoring strategy must also provide for additional monitoring sites if the IMPROVE network is not sufficient to determine whether RPGs will be met.

The SIP must also provide for the following:

- Procedures for using monitoring data and other information in a state with mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas both within and outside the state;
- Procedures for using monitoring data and other information in a state with no mandatory Class I areas to determine the contribution of emissions from within the state to regional haze visibility impairment at Class I areas in other States;
- Reporting of all visibility monitoring data to the Administrator at least annually for each Class I area in the state, and where possible, in electronic format;
- Developing a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I area. The inventory must include emissions for a baseline year, emissions for the most recent year for which data are available, and estimates of future projected emissions. A state must also make a commitment to update the inventory periodically; and
- Other elements, including reporting, recordkeeping, and other measures necessary to assess and report on visibility.

Section 51.308(f) of the RHR requires control strategies to cover an initial implementation period extending to the year 2018, with a comprehensive reassessment and revision of those strategies, as appropriate, every 10 years thereafter. Periodic SIP revisions must meet the core requirements of section 51.308(d) with the exception of BART. The BART provisions of section 51.308(e), as noted above, apply only to the first implementation period. Periodic SIP revisions will assure that the statutory requirement of reasonable progress will continue to be met.

H. Consultation With States and Federal Land Managers (FLMs)

The RHR requires that States consult with FLMs before adopting and submitting their SIPs. (40 CFR 51.308(i)). States must provide FLMs an opportunity for consultation, in person and at least 60 days prior to holding any public hearing on the SIP. This consultation must include the opportunity for the FLMs to discuss their assessment of impairment of visibility in any Class I area and to offer recommendations on the development of the RPGs and on the development and implementation of strategies to address visibility impairment. Further, a state must include in its SIP a description of how it addressed any comments provided by the FLMs. Finally, a SIP must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I areas.

III. What is the relationship of the Clean Air Interstate Rule (CAIR) and the Cross-State Air Pollution Rule (CSAPR) to the regional haze requirements?

A. Overview of EPA's CAIR

CAIR, as originally promulgated, required 28 States and the District of Columbia to reduce emissions of SO_2 and NO_X that significantly contributed to, or interfered with maintenance of, the 1997 national ambient air quality standards (NAAQS) for fine particulates and/or the 1997 NAAQS for 8-hour ozone in any downwind state. (70 FR 25162, (May 12, 2005)). CAIR established emissions budgets for SO_2 and NO_X for States found to contribute significantly to nonattainment in downwind States and required these States to submit SIP revisions that implemented these budgets. States had the flexibility to choose which control measures to adopt to achieve the budgets, including participation in EPA-administered cap-and-trade programs addressing SO_2, NO_X-annual, and NO_X-ozone season emissions. In 2006, EPA promulgated FIPs for all States covered by CAIR to ensure the reductions were achieved in a timely manner.

B. Remand of the CAIR

On July 11, 2008, the DC Circuit issued its decision to vacate and remand both CAIR and the associated CAIR FIPs in their entirety. *See North Carolina* v. *EPA,* 531 F.3d 836 (DC Cir. 2008). However, in response to EPA's petition for rehearing, the Court issued an order remanding CAIR to EPA without vacating either CAIR or the CAIR FIPs. The Court thereby left the EPA CAIR rule and CAIR SIPs and FIPs in place in order to ''temporarily preserve the environmental values covered by CAIR'' until EPA replaces it with a rule

consistent with the court's opinion. *See North Carolina* v. *EPA,* 550 F.3d at 1178. The Court directed EPA to ''remedy CAIR's flaws'' consistent with its July 11, 2008, opinion but declined to impose a schedule on EPA for completing that action. EPA subsequently issued a new rule to address interstate transport of NO_X and SO_2 in the eastern United States (*i.e.,* the Transport Rule, also known as the Cross-State Air Pollution Rule). (76 FR 48208, (August 8, 2011)). EPA explained in that action that EPA is promulgating the Transport Rule as a replacement for (not a successor to) CAIR's SO_2 and NO_X emissions reduction and trading programs.

C. Regional Haze SIP Elements Potentially Affected by the CAIR Remand and Promulgation of CSAPR

The following is a summary of the elements of the regional haze SIPs that are potentially affected by the remand of CAIR. As described above, EPA determined in 2005 that States opting to participate in the CAIR cap-and-trade program need not require BART for SO_2 and NO_X at BART-eligible Electric Generating Units (EGUs). (70 FR 39142–39143). Many States relied on CAIR as an alternative to BART for SO_2 and NO_X for subject EGUs, as allowed under the BART provisions at 40 CFR 51.308(e)(4). Additionally, several States established RPGs that reflect the improvement in visibility expected to result from controls planned for or already installed on sources within the State to meet the CAIR provisions for this implementation period for specified pollutants. Many States relied upon their own CAIR SIPs or the CAIR FIPs for their States to provide the legal requirements which lead to these planned controls, and did not include enforceable measures in the LTS in the regional haze SIP submission to ensure these reductions. States also submitted demonstrations showing that no additional controls on EGUs beyond CAIR would be reasonable for this implementation period.

IV. What is EPA's analysis of Maine's regional haze SIP submittal?

On December 6, 2010, Maine DEP's Air Bureau submitted revisions to the Maine SIP to address regional haze as required by 40 CFR 51.308. Supplemental documentation was submitted on September 14, 2011 and November 9, 2011. EPA has reviewed Maine's submittal and finds that it is consistent with the requirements of 40 CFR 51.308 outlined in section II. A detailed analysis follows.

Maine is responsible for developing a regional haze SIP which addresses visibility in Maine's Class I areas. They are Acadia National Park, Moosehorn Wilderness Area, and Roosevelt Campobello International Park. The State must also address Maine's impact on any other nearby Class I areas.

A. Maine's Affected Class I Area

Maine is home to three Class I areas: (1) Acadia National Park ('Acadia'); (2) Moosehorn Wilderness Area ('Moosehorn'); and (3) Roosevelt Campobello International Park ('Roosevelt Campobello'). In addition to these areas, the MANE–VU RPO contains four other Class I areas in three States: The Lye Brook, Presidential Range/Dry River, and Great Gulf Wilderness Areas in New Hampshire; and the Brigantine Wilderness Area in New Jersey.

The Maine regional haze SIP establishes RPGs for visibility improvement at its Class I areas and a LTS to achieve those RPGs within the first regional haze implementation period ending in 2018. In developing the RPGs for each Class I area, Maine considered both emission sources inside and outside of Maine that may cause or contribute to visibility impairment in Maine's Class I areas. The State also identified and considered emission sources within Maine that may cause or contribute to visibility impairment in Class I areas in neighboring States as required by 40 CFR 51.308(d)(3). The MANE–VU RPO worked with the State in developing the technical analyses used to make these determinations, including state-by-state contributions to visibility impairment in specific Class I areas, which included the three areas in Maine and those areas affected by emissions from Maine.

B. Determination of Baseline, Natural and Current Visibility Conditions

As required by the RHR and in accordance with EPA's 2003 Natural Visibility Guidance, Maine calculated baseline/current and natural conditions for its Class I areas.

1. Estimating Natural Visibility Conditions

Natural background refers to visibility conditions that existed before human activities affected air quality in the region. The national goal, as set out in the Clean Air Act, is a return to natural conditions.

Estimates of natural visibility conditions are based on annual average concentrations of fine particle components. The IMPROVE [4] equation is a formula for estimating light extinction from species measured by the IMPROVE monitors. As documented in EPA's 2003 Natural Visibility Guidance, EPA determined, with concurrence from the IMPROVE Steering Committee, that States may use a ''refined approach'' to the then current IMPROVE formula to estimate the values that characterize the natural visibility conditions of the Class I areas. The purpose of the refinement to the ''old IMPROVE equation'' is to provide more accurate estimates of the various factors that affect the calculation of light extinction. The new IMPROVE equation takes into account the most recent review of the science [5] and it accounts for the effect of particle size distribution on light extinction efficiency of sulfate, nitrate, and organic carbon. It also adjusts the mass multiplier for organic carbon (particulate organic matter) by increasing it from 1.4 to 1.8. New terms are added to the equation to account for light extinction by sea salt and light absorption by gaseous nitrogen dioxide. Site-specific values are used for Rayleigh scattering (scattering of light due to atmospheric gases) to account for the site-specific effects of elevation and temperature. Separate relative humidity enhancement factors are used for small and large size distributions of ammonium sulfate and ammonium nitrate and for sea salt. The terms for the remaining contributors, elemental

[4] The Interagency Monitoring of Protected Visual Environments (IMPROVE) program is a cooperative measurement effort governed by a steering committee composed of representatives from Federal (including representatives from EPA and the FLMs) and RPOs. The IMPROVE monitoring program was established in 1985 to aid the creation of Federal and State implementation plans for the protection of visibility in Class I areas. One of the objectives of IMPROVE is to identify chemical species and emission sources responsible for existing man-made visibility impairment. The IMPROVE program has also been a key participant in visibility-related research, including the advancement of monitoring instrumentation, analysis techniques, visibility modeling, policy formulation and source attribution field studies.

[5] The science behind the revised IMPROVE equation is summarized in numerous published papers. *See, eg.,* J. L. Hand & W. C. Malm, *Review of the IMPROVE Equation for Estimating Ambient Light Extinction Coefficients—Final Report,* March 2006 (Interagency Monitoring of Protected Visual Environments (IMPROVE), Colorado State University, Cooperative Institute for Research in the Atmosphere, Fort Collins, CO), available at *http://vista.cira.colostate.edu/improve/publications/GrayLit/016_IMPROVEeqReview/IMPROVEeqReview.htm;* Marc Pitchford, *Natural Haze Levels II: Application of the New IMPROVE Alogrithm to Natural Species Concentrations Estimates: Final Report of the Natural Haze Levels II Committee to the RPO Monitoring/Data Analysis Workgroup,* Sept. 2006, *available at http://vista.cira.colostate.edu/improve/Publications/GrayLit/029_NaturalCondII/naturalhazelevelsIIreport.ppt.*

carbon (light-absorbing carbon), fine soil, and coarse mass terms, do not change between the original and new IMPROVE equations. Maine opted to use this refined approach, referred to as the ''new IMPROVE equation,'' for all of its areas.

Natural visibility conditions using the new IMPROVE equation were calculated separately for each Class I area by MANE–VU. EPA finds that the best and worst 20 percent natural visibility values for Acadia, Moosehorn, and Roosevelt Campobello as shown in Table 1 were calculated using the EPA guidelines.

2. Estimating Baseline Conditions

The Roosevelt Campobello International Park and the Moosehorn Wilderness Area do not contain an IMPROVE monitor. In cases where onsite monitoring is not available, 40 CFR 51.308(d)(2)(i) requires States to use the most representative monitoring available for the 2000–2004 period to establish baseline visibility conditions, in consultation with EPA. Maine used, and EPA concurs with the use of, 2000–2004 data from the IMPROVE monitor located one mile northeast from the Moosehorn Wilderness Area as representing Moosehorn and Roosevelt Campobello.

As explained in section III.B, for the first regional haze SIP, baseline visibility conditions are the same as current conditions. A five-year average of the 2000 to 2004 monitoring data was calculated for each of the 20 percent worst and 20 percent best visibility days for Acadia National Park and Moosehorn/Roosevelt Campobello. IMPROVE data records for the period 2000 to 2004 meet the EPA requirements for data completeness. (See page 2–8 of EPA's 2003 Tracking Progress Guidance.)

3. Summary of Baseline and Natural Conditions

For the Maine Class I areas, baseline visibility conditions on the 20 percent worst days are 22.89 deciviews at Acadia National Park and 21.72 deciviews at Moosehorn/Roosevelt Campobello. Natural visibility conditions for these areas are estimated to be 12.43 dv and 12.01 dv, respectively, on the 20 percent worst visibility days. The natural and background conditions for the Acadia National Park and Moosehorn Wilderness Area/Roosevelt Campobello International Park for both the 20 percent worst and 20 percent best days are presented in Table 1 below.

TABLE 1—NATURAL BACKGROUND AND BASELINE CONDITIONS FOR THE ACADIA NATIONAL PARK AND MOOSEHORN WILDERNESS AREA/ROOSEVELT CAMPOBELLO INTERNATIONAL PARK

Class I area	2000–2004 Baseline (dv)		Natural conditions (dv)	
	Worst 20%	Best 20%	Worst 20%	Best 20%
Acadia National Park	22.89	8.77	12.43	4.66
Moosehorn Wilderness Area and Roosevelt Campobello International Park	21.72	9.15	12.01	5.01

4. Uniform Rate of Progress

In setting the RPGs, Maine considered the uniform rate of progress needed to reach natural visibility conditions by 2064 (''glide path'') and the emission reduction measures needed to achieve that rate of progress over the period of the SIP to meet the requirements of 40 CFR 51.308(d)(1)(i)(B). As explained in EPA's Reasonable Progress Guidance document, the uniform rate of progress is not a presumptive target, and RPGs may be greater, lesser, or equivalent to the glide path.

For Acadia National Park, the overall visibility improvement necessary to reach natural conditions is the difference between the baseline visibility of 22.89 dv and natural background visibility of 12.43 dv, or an improvement of 10.46 dv for the 20 percent worst visibility days. For Moosehorn Wilderness area and Roosevelt Campobello International Park, the overall visibility improvement necessary to reach natural conditions is the difference between the baseline of 21.72 dv and natural background visibility of 12.01 dv, or an improvement of 9.71 dv for the 20 percent worst visibility days. Maine DEP must also ensure no degradation in visibility for the best 20 percent visibility days over the same period in accordance with 40 CFR 51.308(d)(1).

Maine's SIP submittal presents two graphs, one for the 20 percent best days, and one for the 20 percent worst days, for each Class I area. Maine constructed the graphs for the worst days (*i.e.,* the glide path) in accordance with EPA's 2003 Tracking Progress Guidance by plotting a straight graphical line from the baseline level of visibility impairment for 2000–2004 to the level of natural visibility conditions in 2064. For the best days, the graphs include a horizontal, straight line spanning from baseline conditions in 2004 out to 2018 to depict no degradation in visibility over the implementation period of the SIP. Maine's SIP shows that the State's RPG for its Class I areas provide for improvement in visibility for the 20 percent worst days over the period of the implementation plan and ensure no degradation in visibility for the 20 percent best visibility days over the same period in accordance with 40 CFR 51.308(d)(1).

C. Reasonable Progress Goals

As a state containing a Class I area, 40 CFR 51.308(d)(1) of the RHR requires Maine to develop the reasonable progress goals for visibility improvement during the first planning period.

1. Relative Contributions of Pollutants to Visibility Impairments

An important step toward identifying reasonable progress measures is to identify the key pollutants contributing to visibility impairment at each Class I area. To understand the relative benefit of further reducing emissions from different pollutants, MANE–VU developed emission sensitivity model runs using EPA's Community Multiscale Air Quality (CMAQ) air quality model [6] to evaluate visibility and air quality impacts from various groups of emissions and pollutant scenarios in the Class I areas on the 20 percent worst visibility days.

Regarding which pollutants are most significantly impacting visibility in the MANE–VU region, MANE–VU's contribution assessment demonstrated that sulfate is the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-

[6] CMAQ is a photochemical grid model. The model uses simulations of chemical reactions, emissions of $PM_{2.5}$ and $PM_{2.5}$ precursors, and the Pennsylvania State University/National Center for Atmospheric Research Mesoscale Meteorological Model to produce speciated $PM_{2.5}$ concentrations. For more information, see *http://www.epa.gov/asmdnerl/CMAQ/cmaq_model.html.*

Atlantic Region.[7] Sulfate particles commonly account for more than 50 percent of particle-related light extinction at northeastern Class I areas on the clearest days and for as much as, or more than, 80 percent on the haziest days. For example, at the Brigantine National Wildlife Refuge Class I area (the MANE–VU Class I area with the greatest visibility impairment), on the 20 percent worst visibility days in 2000 through 2004, sulfate accounted for 66 percent of the particle extinction. After sulfate, organic carbon (OC) consistently accounts for the next largest fraction of light extinction. Organic carbon accounted for 13 percent of light extinction on the 20 percent worst visibility days for Brigantine, followed by nitrate that accounts for 9 percent of light extinction.

The emissions sensitivity analyses conducted by MANE–VU predict that reductions in SO_2 emissions from EGU and non-EGU industrial point sources will result in the greatest improvements in visibility in the Class I areas in the MANE–VU region, more than any other visibility-impairing pollutant. As a result of the dominant role of sulfate in the formation of regional haze in the Northeast and Mid-Atlantic Region, MANE–VU concluded that an effective emissions management approach would rely heavily on broad-based regional SO_2 control efforts in the eastern United States.

Through source apportionment modeling MANE–VU assisted States in determining their contribution to the visibility impairment of each Class I area in the MANE–VU region. Maine and the other MANE–VU States adopted a weight-of-evidence approach which relied on several independent methods for assessing the contribution of different sources and geographic source regions to regional haze in the northeastern and mid-Atlantic portions of the United States. Details about each technique can be found in the NESCAUM Document *Contributions to Regional Haze in the Northeast and Mid-Atlantic United States,* August 2006 [hereinafter *MANE–VU Contribution Report*].[8]

The MANE–VU Class I States determined that any state contributing at least 2% of the total sulfate observed on the 20 percent worst visibility days in 2002 were contributors to visibility impairment at the Class I area. Connecticut, Rhode Island, Vermont, and the District of Columbia were determined to contribute less than 2% of sulfate at any of the MANE–VU Class I areas. States found to contribute 2% or more of the sulfate at any of the MANE–VU Class I areas were: Georgia, Illinois, Indiana, Kentucky, Maine, Maryland, Massachusetts, Michigan, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, and West Virginia.

The contribution of Maine emissions to the total sulfate was determined to impact the visibility in not only the Maine Class I areas, but the Great Gulf Wilderness area in New Hampshire as well. The impact of sulfate on visibility is discussed in greater detail below.

EPA finds that Maine DEP has adequately demonstrated that emissions from Maine sources cause or contribute to visibility in nearby Class I Areas.

2. Procedure for Identifying Sources To Evaluate for Reasonable Progress Controls

In developing the 2018 reasonable progress goal, Maine relied primarily upon the information and analysis developed by MANE–VU to meet this requirement. Based on the contribution assessment, MANE–VU focused on SO_2 as the dominant contributor to visibility impairment at all MANE–VU Class I areas during all seasons. In addition, the Contribution Assessment found that only 25 percent of the sulfate at the MANE–VU Class I areas originate in the MANE–VU States. Sources in the Midwest and Southeast regions were responsible for 15 to 25 percent, respectively. Point sources dominated the inventory of SO_2 emissions. Therefore, MANE–VU's strategy includes additional measures to control sources of SO_2 both within the MANE–VU region and in other States that were determined to contribute to regional haze at the MANE–VU Class I Areas.

Based on information from the contribution assessment and additional emission inventory analysis, MANE–VU and Maine identified the following source categories for further examination for reasonable controls:

- Coal and oil-fired EGUs;
- Point and area source industrial, commercial and institutional boilers;
- Cement and Lime Kilns;
- Heating Oil; and
- Residential wood combustion.

MANE–VU analyzed these sources categories as potential sources of emission reductions for making reasonable progress based on the ''four statutory factors'' according to 40 CFR 51.308(d)(3)(V).

3. Application of the Four Clean Air Act Factors in the Reasonable Progress Analysis

As discussed in II.C above, Maine must consider the following factors in developing the RPGs: (1) Cost of compliance; (2) the time necessary for compliance; (3) the energy and non-air quality environmental impacts of compliance; and (4) the remaining useful life of any potentially affected sources. MANE–VU's four factor analysis can be found in ''Assessment of Reasonable Progress for Regional Haze in MANE–VU Class I Areas,'' July 9, 2007, otherwise known as the Reasonable Progress Report. This report has been included as part of the docket for this rulemaking.

Maine and the other MANE–VU States reviewed the Reasonable Progress Report, consulted with one another about possible controls measures, and agreed to the following measures as recommended strategies for making reasonable progress: Implementation of the BART requirements, a 90 percent reduction in SO_2 emissions from 167 EGUs identified as causing the greatest visibility impact[9] (or other equivalent emission reduction), and a reduction in the sulfur content of fuel oil. These measures are collectively known as the MANE–VU ''Ask.''

MANE–VU used model projections to calculate the RPG for the Class I areas in the MANE–VU area. Additional modeling details are provided in section IV.E.2. The projected improvement in visibility due to emission reductions expected by the end of the first period, 2018, is shown in Table 2.

[7] See the NESCAUM Document ''Regional Haze and Visibility in the Northeast and Mid-Atlantic States,'' January 31, 2001.

[8] The August 2006 NESCAUM document ''Contributions to Regional Haze in the Northeast and Mid-Atlantic United States'' has been provided as part of the docket to this proposed rulemaking.

[9] MANE–VU identified these 167 units based on source apportionment modeling using two different meteorological data sets. From each of the modeling runs, MANE–VU identified the top 100 units which contribute to visibility impairment. Differences in model output resulted in a total of 167 units being identified for further control.

TABLE 2—PROJECTED REASONABLE PROGRESS GOAL AND UNIFORM RATE OF PROGRESS FOR MAINE CLASS I AREAS FROM NESCAUM 2018 VISIBILITY PROJECTIONS IN DECIVIEWS

		2000–2004 Baseline	2018 Projection	URP	Natural background
Acadia National Park	20% Worst Visibility Days	22.9	19.4	20.4	12.4
	20% Best Visibility Days	8.8	8.3		4.7
Moosehorn National Wildlife Refuge/Roosevelt Campobello International Park.	20% Worst Visibility Days	21.7	19.0	19.4	12.0
	20% Best Visibility Days	9.2	8.6	.....	5.0

At the time of MANE–VU modeling some of the other States with sources potentially impacting visibility, in the Class I areas in both Maine and the rest of the MANE–VU domain, had not yet made final control determinations for BART, and thus, these controls were not included in the modeling prepared by MANE–VU and used by Maine. This modeling demonstrates that the 2018 control scenario (2018 projection) provides for an improvement in visibility greater than the uniform rate of progress for the Maine Class I areas for the most impaired days over the period of the implementation plan and ensures no degradation in visibility for the least impaired days over the same period.

The modeling supporting the analysis of these RPGs is consistent with EPA guidance prior to the CAIR remand. The regional haze provisions specify that a state may not adopt a RPG that represents less visibility improvement than is expected to result from other CAA requirements during the implementation period. (40 CFR 51.308(d)(1)(vi)). Therefore, in estimating the RPGs for 2018, many States took into account emission reductions anticipated from CAIR. MANE–VU initially reduced emissions from highest impacting 167 EGUs by ninety percent. However, many of the units targeted for the 90% reduction were part of the CAIR program. Since the 90% reduction was larger, in total tons of emissions reduced, than the reductions expected from CAIR, MANE–VU added the excess emissions back into the inventory to account for trading of the emission credits across the modeling domain. This way, MANE–VU States would not overestimate the emission reductions in case States used the CAIR program as their response to the MANE–VU's ''Ask'' of ninety percent reduction from the 167 EGUs in the eastern United States.

The RPGs for the Class I areas in Maine are based on modeled projections of future conditions that were developed using the best available information at the time the analysis was completed. While MANE–VU's emission inventory used for modeling included estimates of future emission growth, projections can change as additional information regarding future conditions becomes available. It would be both impractical and resource-intensive to require a state to continually adjust the RPG every time an event affecting these future projections changed.

EPA recognized the problems of a rigid requirement to meet a long-term goal based on modeled projections of future visibility conditions, and addressed the uncertainties associated with RPGs in several ways. EPA made clear in the RHR that the RPG is not a mandatory standard which must be achieved by a particular date. (64 FR at 35733). At the same time, EPA established a requirement for a five-year, midcourse review and, if necessary, correction of the States' regional haze plans. (40 CFR 52.308(g)). In particular, the RHR calls for a five-year progress review after submittal of the initial regional haze plan. The purpose of this progress review is to assess the effectiveness of emission management strategies in meeting the RPG and to provide an assessment of whether current implementation strategies are sufficient for the state or affected states to meet their RPGs. If a state concludes, based on its assessment, that the RPGs for a Class I area will not be met, the RHR requires the state to take appropriate action. (40 CFR 52.308(h)). The nature of the appropriate action will depend on the basis for the state's conclusion that the current strategies are insufficient to meet the RPGs. In its SIP submittal, Maine commits to the midcourse review and submitting revisions to the regional haze plan where necessary.

EPA is proposing to approve Maine's RPG for the first regional haze planning period. Maine has demonstrated that the emission controls in the MANE–VU ''Ask''—timely installation of BART Controls, a 90 percent reduction in SO_2 emissions from EGUs and a low sulfur fuel oil strategy are reasonable measures for the reduction of visibility impairment as required by EPA's RHR.

D. Best Available Retrofit Technology (BART)

1. Identification of All Bart Eligible Sources

Determining BART-eligible sources is the first step in the BART process. The Maine BART-eligible sources were identified in accordance with the methodology in Appendix Y of the Regional Haze Rule, *Guidelines for BART Determinations Under the Regional Haze Rule, Part II, How to Identify BART-Eligible Sources,* (70 FR 39104, 39156 (July 6, 2005)).

The BART Guidelines requires States to address SO_2, NO_X, and particulate matter. States are allowed to use their best judgment in deciding whether VOC or ammonia emissions from a source are likely to have an impact on visibility in the area. The Maine DEP addressed SO_2, NOx, and used particulate matter less than 10 microns in diameter (PM_{10}) as an indicator for particulate matter to identify BART eligible units, as the Guidelines require. Consistent with the Guidelines, the Maine DEP did not evaluate emissions of VOCs and ammonia in BART determinations due to the lack of impact on visibility in the area due to anthropogenic sources. The majority of VOC emissions in Maine are biogenic in nature, especially near the Maine Class I areas. Therefore, the ability to further reduce total ambient VOC concentrations at Class I areas is limited. Point, area, and mobile sources of VOCs in Maine are already comprehensively controlled as part of ozone attainment and maintenance strategy. In respect to ammonia, the overall ammonia inventory is very uncertain, but the amount of anthropogenic emissions at sources that were BART-eligible is relatively small.

The identification of BART sources in Maine was undertaken as part of a multi-state analysis conducted by the Northeast States for Coordinated Air Use Management (NESCAUM). NESCAUM worked with Maine DEP licensing engineers to review all sources and determine their BART eligibility. Maine DEP identified 10 sources as

BART-eligible. These sources are shown in Table 3 below.

TABLE 3—BART-ELIGIBLE SOURCES IN MAINE

Source and unit	Location	National emission inventory (NEI) identification code	BART Source category
FPLE Wyman Station	Yarmouth, ME	2300500135	SC 1—Fossil fuel fired electric plants.
Boiler #3		–004	
Boiler #4		–005	
Woodland Pulp, LLC	Woodland, ME	2302900020	SC 3—Kraft pulp mills.
Power Boiler #9		–001	
Lime Kiln		–002	
Dragon Products [10]	Thomaston, ME	2301300028	SC 4—Portland cement plants.
Red Shield Acquisition, LLC	Old Town, ME	2301900034	SC 3—Kraft pulp mills.
Recovery Boiler #4		–002	
Lime Kiln		–004	
Verso Bucksport	Bucksport, ME	2300900004	SC 22—Fossil fuel fired boilers.
Boiler #5		–001	
SD Warren	Hinckley, ME	2302500027	SC 3—Kraft pulp mills.
Recovery Boiler		–003	
Smelt Tanks #1 and #2		–007	
Lime Kiln		–004	
Verso Androscoggin	Jay, ME	2300700021	SC 3—Kraft pulp mills.
Power Boiler #1		–001	
Power Boiler #2		–002	
Waste Fuel Incinerator		–003	
Recovery Boilers #1 and #2		–004/005	
Smelt Tank #1		–009	
Smelt Tank #2		–010	
Lime Kiln A		–007	
Lime Kiln B		–008	
Flash Dryer		–018	
Katahdin Paper	Millinocket, ME	2301900056	SC 22—Fossil fuel fired boilers.
Power Boiler #4		–004	
Lincoln Paper and Tissue	Lincoln, ME	2301900023	SC 3—Kraft pulp mills.
Recovery Boiler #2		–002	
Rumford Paper	Rumford, ME	2301700045	SC 3—Kraft pulp mills.
Power Boiler #5		–003	

The initial list of BART-eligible sources complied by NESCAUM included SAPPI Somerset #1 Power Boiler. This unit was subsequently determined to not be BART eligible due to a federally enforceable permit condition which limits the operation of this unit to less than 250 million BTUs per hour heat input. Additionally, boiler #1 is not considered integral to the Kraft pulp process since it only provides steam and power to the facility.

Cap-Outs

BART applies to sources with the potential to emit 250 tons or more per year of any visibility impairing pollutant. (70 FR 39160). BART-eligible sources that adopt a federally enforceable permit limit to permanently limit emissions of visibility impairing pollutants to less than 250 tons per year may thereby ''cap-out'' of BART. Three Maine sources capped out of BART by taking such limits:

1. Katahdin Paper Company, LLC
2. Rumford Paper Company
3. Verso Bucksport, LLC

These sources have actual emissions of visibility impairing pollutants of less than 250 tons per year, but are BART-eligible because their potential emissions exceed the 250 tons per year threshold. Pursuant to the requests of these sources, the Maine DEP has established federally enforceable permit conditions that limit the potential to emit (PTE) of these units to less 250 tons per year for all visibility impairing pollutants. As a result, Maine has concluded that these sources are not BART eligible.

Federally enforceable terms and conditions were established for each source that limits the PTE for SO_2, PM_{10} and NO_X to less than 250 TPY. If, in the future, a source requests an increase in its PTE above the 250 tons per year threshold for a visibility impairing pollutant, then it shall be subject BART requirements.

2. Identification of Sources Subject to BART

Maine, working with MANE–VU, found that every MANE–VU state with BART-eligible sources contributes to visibility impairment at one or more Class I areas to a significant degree (See the MANE–VU Contribution Report). As a result, Maine found that all BART eligible sources within Maine are subject to BART. The Maine DEP utilized this option for demonstrating its sources are reasonably anticipated to cause or contribute to visibility impairment at Class I areas for three reasons: (1) The BART sources represent an opportunity to achieve greater reasonable progress; (2) additional public health and welfare benefits will accrue for the resulting decreases in fine particulate matter; and (3) to demonstrate its commitment to federal

[10] On October 1, 2010 and November 8, 2010, Dragon Products, LLC submitted documentation asserting that the facility (kiln) qualifies as a reconstructed source. After reviewing the documentation and conferring with EPA, via a letter dated September 14, 2011, Maine DEP found the facility meets the criteria of a ''reconstructed source'' and therefore is not BART eligible.

land managers and other RPOs as it seeks the implementation of reasonable measures in other States.

According to Section III of the Guidelines, once the state has compiled its list of BART-eligible sources, it needs to determine whether to make BART determinations for all of the sources or to consider exempting some of them from BART because they may not reasonably be anticipated to cause or contribute to any visibility impairment in a Class I area.

Based on the collective importance of BART sources, Maine decided that no exemptions would be given for sources; a BART determination will be made for each BART-eligible source.[11]

3. Modeling to Demonstrate Source Visibility Impact

MANE–VU conducted modeling analyses of BART-eligible sources using the EPA approved air quality model, California Pollution Model (CALPUFF), in order to provide a regionally-consistent foundation for assessing the degree of visibility improvement which could result from the installation of BART controls.[12] While this modeling analysis differed slightly from the guidance, it was intended to provide a first-order estimate of the maximum visibility benefit that could be achieved by eliminating all emissions from a BART source, and provides a useful metric for determining which sources are unlikely to warrant additional controls to satisfy BART.

The MANE–VU modeling effort analyzed 136 BART-eligible sources in the MANE–VU region using the CALPUFF modeling platform and two meteorological data sets: (1) A wind field based on National Weather Service (NWS) observations; and (2) a wind field based on the Pennsylvania State University/National Center for Atmospheric Research Mesoscale Meteorological Model (MM5) version 3.6. Modeling results from both the NWS and MM5 platforms include each BART eligible unit's maximum 24-hr, 8th highest 24-hr, and annual average impact at the Class I area. These visibility impacts were modeled relative to the 20 percent best, 20 percent worst, and average annual natural background conditions. In accordance with EPA guidance, which allows the use of either estimates of the 20 percent best or the annual average of natural background visibility conditions as the basis for calculating the deciview difference that individual sources would contribute for BART modeling purposes, MANE–VU opted to utilize the more conservative best conditions estimates approach because it is more protective of visibility.

The 2002 baseline modeling provides an estimate of the maximum improvement in visibility at Class I Areas in the region that could result from the installation of BART controls (the maximum improvement is equivalent to a ''zero-out'' of emissions). In virtually all cases, the installation of BART controls would result in less visibility improvement than what is represented by a source's 2002 impact, but this approach does provide a consistent means of identifying those sources with the greatest contribution to visibility impairment.

In addition to modeling the maximum potential improvement from BART, MANE–VU also determined that 98 percent of the cumulative visibility impact from all MANE–VU BART eligible sources which corresponds to a maximum 24-hr impact of 0.22 dv from the NWS-driven data and 0.29 dv from the MM5 data. As a result, MANE–VU concluded that, on the average, a range of 0.2 to 0.3 dv would represent a significant impact at MANE–VU Class I areas, and sources having less than 0.1 dv impact are unlikely to warrant additional controls under BART.[13]

4. Maine BART Analysis Protocol

40 CFR 51.308(e)(1)(ii)(A) requires that, for each BART-eligible source within the state, any BART determination must be based on an analysis of the best system of continuous emission control technology available and the associated emission reductions achievable. In addition to considering available technologies, this analysis must evaluate five specific factors for each source: (1) The costs of compliance; (2) the energy and non-air quality environmental impacts of compliance; (3) any existing pollution control technology in use at the source; (4) the remaining useful life of the source; and (5) the degree of visibility improvement which may reasonably be anticipated from the use of BART.

Although Maine did not exempt any BART-eligible sources from a BART determination, it did utilize the MANE–VU zero-out modeling as a surrogate for estimating the visibility improvement reasonably expected from the application of controls. There are eight BART-eligible sources with less than 0.1 deciview impact at any Class I area, with impacts ranging from 0.01 deciviews to 0.0651 deciviews. These sources are: SD Warren smelt tanks #1 and #2; SD Warren lime kiln; Verso Androscoggin smelt tank #1 and #2; Verso Androscoggin lime kilns A and B; and Verso Androscoggin flash dryer. Maine noted that the majority of these units have existing controls in place that would likely satisfy the BART requirements. Given this and the fact that zero-out modeling shows that the elimination of all emissions from these sources would provide only insignificant visibility benefits at nearby Class I areas, Maine used a streamline approach for the BART determinations for these sources.

5. Source Specific BART Determinations

The following section discusses the BART determinations for sources in Maine.

a. Woodland Pulp LLC (Formerly Domtar Maine, LLC)

i. Background

The Woodland Pulp facility is a pulp mill, which utilizes the Kraft Pulping process and produces market pulp. The Mill also operates support facilities including woodyards, wastewater treatment plant, sludge press, pulp production labs, environmental labs, finishing, shipping, and receiving operations, storage areas, a landfill, and a power boiler.

There are two BART eligible units at the facility; Power boiler #9 and the lime kiln.

Power boiler #9 is rated at 625 MMBtu/hr and was placed into operation in 1971. Power boiler #9 is fueled primarily by biomass but is also licensed to burn #6 fuel oil, sludge, tire derived fuel (TDF), specification waste oil, high volume low concentration (HVLC) gas, low volume high concentration (LVHC) non-condensable gas, mill yard waste, oily rags, stripper off-gas, and propane. Emissions are controlled using a variable-throat wet

[11] Maine's decision that all BART eligible sources are subject to BART should not be misconstrued to mean that all BART-eligible sources must install controls. Maine's approach simply requires the consideration of each of the five statutory factors before determining whether or not controls are warranted.

[12] The MANE–VU modeling protocol can be found in the NESCAUM ''BART Resource Guide,'' dated August 23, 2006, (*http://www.nescaum.org/documents/bart-resource-guide/bart-resource-guide-08-23-06-final.pdf/*).

[13] As an additional demonstration that sources whose impacts were below the 0.1 dv level were too small to warrant BART controls, the entire MANE-VU population of these units was modeled together to examine their cumulative impacts at each Class I area. The results of this modeling demonstrated that the maximum 24-hour impact at any Class I area of all modeled sources with individual impacts below 0.1 dv was only a 0.35 dv change relative to the estimated best days natural conditions at Acadia National Park. This value is well below the 0.5 dv impact used by most RPOs and States for determining whether a BART-eligible source contributes to visibility impairment.

venturi scrubber and low-NO_X burners (LNBs). The lime kiln is rated at 75 MMBtu/hr and was placed into operation in 1966. Emissions are controlled using a variable-throat wet venturi scrubber and a Ceilcote cross-flow scrubber. The lime kiln is fueled by #6 fuel oil.

ii. Power Boiler #9

(1) PM BART Review: Maine evaluated the use of fabric filters, wet electrostatic precipitator (WESP), dry electrostatic precipitator (DESP), and wet scrubbers to control PM at power boiler #9. Fabric filters were found not technically feasible due to fire risk from combustible fly-ash, while WESP is not technically feasible due to operational difficulties with multi-fuel boilers. A DESP could not be installed post-scrubber due to excess moisture levels in the exhaust stream, but could be installed upstream. An upstream DESP was evaluated and found to provide a 98–99% control efficiency for biomass and a 90% efficiency for oil for PM. For comparison, a wet scrubber provides an 85–98% control efficiency for PM. Maine estimated the cost for DESP installation at $4,640 per ton of PM removed. Maine concluded that the addition of DESP with the existing wet venturi scrubber is not a cost-effective option and determined that current controls represent BART for PM for power boiler #9.

(2) SO_2 BART Review: Power boiler #9 is currently controlled through the use of a wet scrubber. In addition, the boiler is fueled primarily by biomass, a naturally low sulfur fuel. Maine concluded that the combination of a wet scrubber in use with primarily biomass is the maximum level of control available for this type of unit. Maine determined that current controls represent BART.

(3) NO_X BART Review: Maine identified a number of potential NO_X control strategies for use on power boiler #9, including NO_X tempering, flue gas recirculation (FGR), selective non-catalytic reduction (SNCR), selective catalytic reduction (SCR), LNBs and good combustion practices. The State found that several potential NO_X controls were technically infeasible and did not warrant further investigation. Maine concluded that NO_X tempering is not technically feasible due to reduced thermal efficiency and that SCR is not technically feasible due to the increased frequency of catalyst fouling from multi-fuel boilers. FGR was determined to be not technically feasible based on previous failed FGR trials conducted on power boiler #9. SNCR, with a 30–40% control efficiency, and LNBs, with 10% control efficiency, were identified as technically feasible control strategies. Maine estimated the cost-effectiveness of SNCR at $7,360 per ton and noted that SNCR has a reduced effectiveness on boilers with significant load swings (such as the Power Boiler #9). Given the low cost-effectiveness of SNCR, Maine determined the continued use of LNBs represent BART for the power boiler #9.

iii. Lime Kiln

(1) PM BART Review: The lime kiln is subject to the Maximum Available Control Technology (MACT) standard for PM found in 40 CFR Part 63, Subpart MM. The BART Guidelines state that for sources subject to a MACT standard, ''[u]nless there are new technologies subsequent to the MACT standards which would lead to cost-effective increases in the level of control, you may rely on the MACT standards for purposes of BART.'' (50 FR 39164, (July 6, 2005)) Maine determined that there are no new technologies for control of this source and therefore that compliance with MACT therefore represents BART for the lime kiln.

(2) SO_2 BART Review: Maine identified the use of a wet scrubber and in-process capture as feasible technologies for the control of SO_2 from the lime kiln. Both technologies are currently employed by Woodland Pulp (including two wet scrubbers). Therefore, current controls were determined to be BART.

(3) NO_X BART Review: A number of potential NO_X control strategies were identified for the lime kiln, including: SNCR, SCR, non-selective catalytic reduction (NSCR), FGR, LNBs, and good combustion practices. Maine determined the impracticality of installing chemical injection nozzles inside a rotating kiln drum makes SNCR technically infeasible. Maine also concluded that SCR and NSCR are not feasible due to the known presence of catalyst fouling substances in the lime kiln. The State found that FGR is not feasible as it reduces the temperature in the flame zone, thus hindering the chemical reaction taking place in the lime kiln. The State also concluded that LNBs are a non-demonstrated technology and are not listed in the EPA BACT/RACT/LEAR Clearinghouse for lime kiln emissions control. Maine concluded that good combustion practices are the only feasible option for controlling NO_X which is already employed at the lime kiln. Therefore, current controls were determined to represent BART for the lime kiln.

iv. EPA Assessment

EPA finds that Maine's analyses and conclusions for the BART emission units located at the Woodland Pulp LLC facility are reasonable. EPA has reviewed the Maine analyses and concluded they were conducted in a manner consistent with EPA's BART Guidelines.

b. FPL Energy Wyman, LLC

i. Background

FPL Energy Wyman is an 850-megawatt electric generating facility located on Cousins Island in Yarmouth, Maine. The plant consists of four generation units, all of which fire #6 residual fuel oil. A fifth unit is a smaller oil-fired auxiliary boiler which provides building heat and auxiliary steam and a sixth unit is an emergency backup diesel generator that provides electricity for use on-site. There are two BART eligible units at the facility—boiler #3 and boiler #4.

Boiler #3 is a Combustion Engineering boiler, installed in 1963, with a maximum design heat input capacity of 1,190 MMBtu/hr firing #6 fuel oil (with 2.0% sulfur content by weight). The boiler is equipped with multiple centrifugal cyclones for control of particulate matter and optimization and combustion controls for NO_X. Boiler #4 is a Foster Wheeler boiler, installed in 1975, with a maximum design heat input capacity of 6,290 MMBtu/hr firing #2 or #6 fuel oil (with 0.7% sulfur). The boiler is equipped with an electrostatic precipitator for control of particulate matter and optimization and combustion controls for NO_X.

ii. Boilers #3 and #4

(1) PM BART Review: Emissions of PM from oil fired boilers are a function of the efficiency of the fuel firing.[14] Both boilers #3 and #4 have high efficiency combustion systems in conjunction with PM control devices. Boiler #3 has a Multiclone dust collectors. Boiler #4 has an ESP, the most stringent control available. The cost analysis of installing an ESP on boiler #3 resulted in a pollutant removal cost effectiveness of $19,000/ton of PM removed and a visibility improvement cost effectiveness of $143 million per deciview of visibility improvement. This was determined to be not cost-

[14] It is estimated from the MANE–VU August 2006 document *Contributions to Regional Haze in the Northeast and Mid-Atlantic United States, Tools and Techniques for Apportioning Fine Particle/Visibility Impairment in MANE–VU* (pages 3–2, 4–7, 4–8) that coarse particulate matter is responsible for typically less than 4% of the contribution to visibility impairment at the MANE–VU Class I areas.

effective. Therefore, Maine determined that current controls on boiler #3 represent BART. Maine determined the ESP on boiler #4 represents BART because it is the most stringent control available.

(2) SO_2 BART Review: Emissions of SO_2 from oil fired boilers are related to the sulfur in the fuel. Maine identified the following available retrofit control technologies for reducing SO_2 emissions from boilers #3 and #4: Low sulfur #2 fuel oil, reduced sulfur #6 fuel oil, and wet or dry scrubbers. The use of low sulfur #2 fuel oil (0.05% down to 0.0015% sulfur by weight) and reduced sulfur #6 fuel oil (1% or less sulfur by weight) were considered technically feasible options. The application of post combustion controls of wet or dry scrubbers on large, oil-fired boilers was researched by Maine. The state found that, generally such controls were typically applied only to coal-fired boilers. As a general matter, the use of scrubbers on oil-fired boilers is considered cost prohibitive. As a result, Maine did not consider wet or dry scrubbers as a BART option.

Maine performed a cost analysis on lowering the sulfur content in the fuel used in both boilers. Boiler #3 currently fires 2% sulfur by weight oil and boiler #4 currently fires 0.7% sulfur by weight oil. The annual costs were calculated to be the following (based on the differential fuel costs):

TABLE 4—SO_2 CONTROL COSTS ANALYSIS FOR WYMAN #3 AND #4

Boiler #3		Boiler #4	
% Sulfur	Annual costs (in millions)	% Sulfur	Annual costs (in millions)
1.0	$0.68	.....	.....
0.7	0.80	.....	.....
0.5	3.2	0.5	$9.2
0.3	5.7	0.3	18.3

Maine also estimated the visibility cost effectiveness, incremental visibility improvement, and incremental visibility cost effectiveness from switching from 2% sulfur by weight to reduced sulfur content fuel oil for boiler #3. In estimating these values, Maine used the cumulative visibility benefits at several of the nearest Class I areas on the highest impacting visibility day. Maine estimated the following:

TABLE 5—SO_2 CONTROL VISIBILITY ANALYSIS FOR WYMAN UNIT #3

% Sulfur	Visibility cost effectiveness ($/deciview) (in millions)	Incremental visibility improvement	Incremental visibility cost effectiveness ($/deciview) (in millions)
1.0	$0.69	.....	.....
0.7	0.56	0.44 dv	$0.27
0.5	1.82	0.35 dv	6.97
0.3	2.64	0.37 dv	6.59

The visibility cost effectiveness, incremental visibility improvement, and incremental visibility cost effectiveness from switching from 0.7% sulfur to reduced sulfur content fuel oil for boiler #4 was the following:

TABLE 6—SO_2 CONTROL VISIBILITY ANALYSIS FOR WYMAN UNIT #4

% Sulfur	Visibility cost effectiveness ($/deciview) (in millions)	Incremental visibility improvement	Incremental visibility cost effectiveness ($/deciview) (in millions)
0.5	$22.3	.....	.....
0.3	19.5	0.53 dv	$17.3

Based on the information above, Maine determined 0.7% sulfur by weight fuel oil for boiler #3 beginning in 2013, and the current limit of 0.7% sulfur by weight fuel oil for boiler #4 represents BART for these units.

(3) NO_X BART Review: In order to meet the ozone National Ambient Air Quality Standard (NAAQS) requirement, FPL Energy Wyman installed combustion control technologies pursuant to Maine's Chapter 145, *NO_X Control Program Regulation.* FPL Energy Wyman installed combustion control technology upgrades, including low NO_X fuel atomizers, improved swirler design, and overfire and interstage air ports. The burners were optimized and fuel/air flows were balanced to the burners on each unit. The combustion control technology upgrades were completed in April 2003 and reductions in NO_X emissions of 29–35% have been documented with boiler #3 and reductions of 24–47% have been documented with boiler #4 depending on each unit's load. These reductions are equivalent to the reductions that

could be achieved through the use of SNCR on the boilers.

The cost analysis of installing additional NO_X controls of regenerative selective catalytic reduction (RSCR) on the boilers in addition to the current combustion controls resulted in a pollutant removal cost effectiveness of $125,000/ton and $83,000/ton of NO_X removed for boiler #3 and boiler #4, respectively. Maine concluded that such controls are not cost effective. Therefore, Maine determined the current combustion controls represent BART for these units.

iii. EPA Assessment

EPA finds that Maine's analyses and conclusions for the BART emission units located at the FPL Energy Wyman, LLC facility are reasonable. Although EPA does not generally recommend that States rely solely on $/deciview consideration in making BART determinations, EPA does not believe that broader analysis of the costs and visibility benefits associated with changing the sulfur content of the fuel used in boiler #3 and #4 would have resulted in a different BART determination in this case. EPA has reviewed the remaining Maine analyses for FPL Energy Wyman, LLC and concluded they were conducted in a manner consistent with EPA's BART Guidelines.

c. Lincoln Paper and Tissue, LLC

i. Background

Lincoln Paper & Tissue (LPT) is an integrated Kraft pulp and paper mill. Currently, LPT operates a hardwood digester and a softwood sawdust digester to produce pulp with approximately 50% recycled content. LPT uses one recovery boiler and a lime kiln in the recaust process for reclamation of the pulping chemicals. Also, LPT has three oil-fired boilers and one multi-fuel boiler to supply the mill with steam. The two paper machines produce specialty paper and the two tissue machines produce multi-ply dyed tissue. The pulp dryer machine produces bailed pulp which is either used by LPT or sold to other paper manufacturers.

At LPT, the only BART-eligible source is the recovery boiler #2, which is used to recover the pulping chemicals and produce steam. Emissions exit through two identical 175 foot stacks.

The recovery boiler is a straight fire unit burning black liquor, typically without combustion support from fossil fuel. Normally, oil is used only during start-ups and shutdowns and to stabilize operation of the boiler. Recovery boiler #2 is exhausted to an ESP to control particulate emissions. This unit also serves to re-introduce salt cake into the black liquor which further concentrates the solids content.

ii. Recovery Boiler #2

(1) PM BART Review: PM emissions are currently controlled with the ESP to levels meeting compliance with MACT standards (40 CFR Part 63, Subpart MM). Since the unit is meeting the MACT standard, Maine determined that these controls represent BART.

(2) SO_2 and NO_X BART Review: SO_2 and NO_X emissions are controlled by proper operation of the recovery boiler, including a three-level staged combustion air control system, and limitations on fuel oil use and the sulfur content. As no new control technologies are available for further control of these pollutants from a recovery boiler, current controls constitute BART for this unit.

iii. EPA Assessment

EPA finds that Maine's analyses and conclusions for the BART emission unit located at the Lincoln Paper and Tissue, LLC facility are reasonable. EPA has reviewed the Maine analyses and concluded they were conducted in a manner consistent with EPA's BART Guidelines. Current NO_X and SO_2 emission limits are federally enforceable via the Maine Air License A–177–71–A/R issued under Maine's EPA approved Prevention of Significant Deterioration program.

d. SD Warren Company, Somerset

i. Background

SD Warren Company (SDW) is an integrated Kraft pulp and paper mill. Whole logs, chips, and other biomass, are delivered to the mill by truck and/or train. The logs are sawn, debarked, chipped and stored in the mill's woodyard. The biomass is stored in piles and then conveyed to the boilers. The chips are stored in piles and then conveyed to the chip bin, chip steaming vessel, and then the digester. SDW operates one Kamyr continuous digester to produce pulp (hardwood, softwood, or any combination thereof), one recovery boiler and one lime kiln in the recaust process for reclamation of the pulping chemicals. There are two multi-fuel boilers and an oil fired package boiler to supply the mill with steam. SDW has three paper machines which produce paper. There are also two pulp machines. One pulp machine has a steam operated dryer and both machines produce bailed pulp. The mill also operates support facilities, including the wood yard, wastewater treatment plant, sludge presses, pulp and paper production labs, environmental labs, roll wrapping, shipping and receiving operations, and a landfill.

There are four emissions units that were determined to be BART eligible at this facility: the recovery boiler, smelt tanks #1 and #2, and the lime kiln.

ii. Recovery Boiler

The recovery boiler was installed in 1975–1976. It is used to recover chemicals from spent pulping liquors and to produce steam for mill operations. The recovery boiler is licensed to fire black liquor (spent pulping liquor), residual (#6) fuel oil, distillate (#2) fuel oil, and used oil. The recovery boiler is also licensed to combust low volume-high concentration (LVHC) and high volume-low concentration (HVLC) gases produced at various points in the pulping process. The licensed maximum black liquor firing rate is 5.5 million pounds per day of BLS. The recovery boiler is subject to MACT standards for Chemical Recovery Combustion Sources at Kraft Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills (40 CFR Part 63, Subpart MM).

(1) PM BART Review: SDW currently operates a three-chamber electrostatic precipitator on the recovery boiler. Maine identified the following available retrofit technologies for control of PM from Kraft mill recovery boilers: Electrostatic precipitators, wet scrubbers, and fabric filters. Wet scrubbers were eliminated as a feasible control strategy because the ESP currently installed is capable of a greater degree of emissions control at a lower operating cost. Fabric filters are generally considered to be equivalent to ESPs in regards to pollution control; however, fabric filters have not been applied to recovery boilers at Kraft mills. Maine therefore eliminated fabric filters as a feasible control alternative and concluded that the current control, specifically operation of the ESP, represents BART for this unit.

(2) SO_2 BART Review: SDW's recovery boiler is currently equipped with a four-level staged combustion air system. SDW identified staged combustion systems and wet scrubbers as available retrofit technologies for control of SO_2 from Kraft mill recovery boilers. SO_2 emissions from recovery boilers occur due to the volatilization and subsequent oxidation of sulfur compounds that are present in the black liquor. Proper operation of the recovery boiler maximizes the conversion of sulfur compounds in the liquor to the principal constituents of the pulping chemicals. This occurs through capture

of these sulfur compounds in the combustion zone of the boiler by sodium fume released from the smelt bed. Consequently, proper combustion control achieved through the use of staged combustion air systems results in effective control of SO_2 emissions. The only available alternative for SO_2 emission control is a wet scrubber. However, recovery boilers with a properly operated staged air combustion system operate at much lower concentrations of SO_2 in the flue gas than emission units to which wet scrubbers are routinely applied. Given the already low SO_2 levels, the installation and use of a scrubber would be prohibitively expensive. The maximum modeled visibility impairment from this unit due to SO_2 is 0.02 dv. Maine determined therefore that current control represents BART for this unit.

(3) NO_X BART Review: SDW's recovery boiler is upgraded to a four-level staged combustion air system. Maine identified the following available retrofit technologies for control of NO_X from Kraft mill recovery boilers: Staged combustion systems, SNCR, SCR, LNBs, Flue Gas Recirculation, and Low-Temperature Oxidation. Emission controls which have been demonstrated on conventional steam boilers, including SNCR, SCR, FGR, and LNBs have not been demonstrated to be feasible on Kraft mill recovery boilers. There has been some small-scale work done on ''low-temperature oxidation'' where pure oxygen is injected into the evaporation process to drive ammonia from the black liquor. However, the company currently looking into this technology has advised Maine that they are not aware of any commercial size units where this technology has been used. Maine did not consider this technology to be technically feasible. Maine concluded that there are no technically feasible alternatives for control of NO_X emissions from recovery boilers other than proper operation of the boiler and the staged combustion control system. Since the controls already in place are considered the most stringent available, Maine determined that these controls represent BART for this unit.

iii. Smelt Tanks #1 and #2

SDW operates two smelt tanks which were installed in 1975–1976. The smelt tanks operate in conjunction with the recovery boiler. Recovered sodium-based pulping chemicals, in the form of molten salts, are discharged from the bottom of the recovery boiler into the smelt tanks, where they are mixed with a water/caustic solution to form green liquor. The smelt tanks are subject to MACT standards (40 CFR Part 63, Subpart MM).

(1) PM BART Review: SDW currently operates a wetted fan scrubber on each of the smelt tanks for control of particulate emissions. The scrubbing media for the scrubbers is either water or weak wash from the white liquor clarification system. Maine identified the following potential retrofit technologies for control of PM from smelt tanks: ESPs, wet scrubbers, fabric filters, and mist eliminators. The most common PM emission control system employed on smelt tanks is wet scrubbers. The use of wet scrubbers also provides a secondary environmental benefit by controlling reduced sulfur compound emissions. The high moisture content of the smelt tank exhaust gases makes dry PM control systems, including fabric filters and dry ESPs, technically infeasible on this type of emission unit. The only remaining control technology, mist eliminators, provides a lower degree of PM emission control than the use of wet scrubbers. Therefore, Maine determined that the current operation of the wet scrubbers represents BART for these units.

(2) SO_2 BART Review: Since no combustion takes place within smelt tanks, SO_2 is not generated within the emission unit. Maine has found that SO_2 emissions from the smelt tanks are dependent on how much sulfur carries over from the respective recovery boilers with the smelt. SO_2 emissions from both smelt dissolving tanks combined are very low at approximately 10.5 tons per year, primarily because the wet scrubber used for PM control also reduces SO_2 emissions. Maine determined that BART for SO_2 emissions from smelt tanks #1 and #2 is no additional control based on the following: (1) SO_2 emissions from the smelt dissolving tanks during the BART baseline period were, and are expected to continue to be, extremely low (~10.5 TPY, combined); (2) the smelt dissolving tanks and associated scrubbers are designed and operated to minimize SO_2 emissions; (3) SO_2 emissions from the smelt dissolving tanks have a minimal impact on visibility (<0.004 deciviews); and (4) additional control of SO_2 emissions from the smelt dissolving tanks would have a minimal impact on overall visibility. Therefore, Maine determined that current controls represent BART for these units.

(3) NO_X BART Review: Since no combustion takes place within smelt tanks, NO_X is not generated within the emission unit. Therefore, Maine determined that current controls represent BART for these units.

iv. Lime Kiln

The lime kiln was installed in 1975–1976. It is used to convert lime mud (principally calcium carbonate) to lime (calcium oxide). Fuel is fired in the lime kiln to generate the heat that is needed to convert lime mud to lime. The lime kiln is licensed to fire residual (#6) fuel oil, distillate (#2) fuel oil, used oil, and propane. The lime kiln is also licensed to combust LVHC gases and foul condensate streams.

(1) PM BART Review: Particulate emissions from the lime kiln are currently controlled by a variable throat venturi scrubber system followed by a cyclone separator. Maine identified the following available retrofit technologies for control of PM from lime kilns: Electrostatic precipitators, wet scrubbers, and fabric filters. Fabric filters have never been applied to Kraft pulp mill lime kilns. They are generally deemed to be technically infeasible on lime kilns. ESPs provide a greater degree of particulate matter control than venturi scrubbers. However, the possible annual reduction in emissions to be gained by replacing the existing scrubber with an ESP is relatively small (estimated at under 40 tons/year). Additionally, the scrubber also helps control emissions of SO_2 and reduced sulfur compounds. This beneficial removal of other pollutants is not available to lime kilns equipped with ESPs. Consequently, replacement of the existing scrubber with an ESP would be expected to result in higher Total Reduced Sulfur (TRS) and SO_2 emissions from the lime kiln. Furthermore, any potential improvement in visibility impacts associated with retrofitting an ESP on the lime kiln, the modeling result for current PM emissions from the Lime Kiln was 0.0463 dv; well below the State's de minimis level of 0.1 dv. Therefore, Maine determined that the current operation of the scrubber represents BART for the lime kiln.

(2) SO_2 BART Review: SO_2 forms in the lime kiln from either the combustion of sulfur in the fuel or combustion of TRS compounds in the LVHC gases. Currently, emissions of SO_2 are controlled by using a combination of the inherent sulfur removal provided by operation of the kiln itself (*i.e.* extensive contact between burner exhaust gases and the calcium compounds in the kiln) enhanced through the use of a venturi wet scrubber (post-combustion). SDW also uses a caustic scrubber (pre-combustion) on the LVHC gases fired in the boiler. Firing of LVHC gases in the

lime kiln without pre-treatment with the caustic scrubber causes formation of rings within the lime kiln leading to excessive down-time of the equipment. Emissions of SO_2 from the lime kiln can vary significantly based on the amount of LVHC gases being fired and whether or not the caustic scrubber is in operation. Maine identified the following available retrofit technologies for control of SO_2 from lime kilns: Lime kiln operation and wet scrubbers. Since these controls are already in place, Maine determined that current controls represent BART for this unit.

(3) NO_X BART Review: NO_X emissions from the lime kiln are currently controlled by good combustion controls and operation of the unit's combustion air system. The maximum modeled visibility impairment on a Class I area is 0.06 dv. Maine identified the following potential retrofit technologies for control of NO_X from lime kilns: Combustion Air Systems controls, SNCR, SCR, LNBs, and FGR. However, Maine's analysis concluded there are no technically feasible alternatives for control of NO_X from lime kilns beyond the measures currently employed. LNBs negatively impact the efficiency, energy use, and calcining capacity of a lime kiln. Post combustion controls, such as SCR and SNCR, are not feasible for lime kilns. The temperature window necessary for the SNCR process (1500–2000 °F) is unavailable in a Kraft lime kiln. The high PM load at the exit of the kiln precludes the placement of the catalyst grid needed for the SCR process upstream of the PM control device, and the requisite temperature window required for this process (550–750 °F) is not available downstream of the PM control system. Therefore, Maine determined that current controls represent BART for this unit.

v. EPA Assessment

EPA finds that Maine's analyses and conclusions for the BART emission units located at the SD Warrant Company, Somerset facility are reasonable. EPA has reviewed the Maine analyses and concluded they were conducted in a manner consistent with EPA's BART Guidelines.

e. Verso Androscoggin

i. Background

The Verso Androscoggin pulp mill in Jay, Maine, produces bleached Kraft pulp and groundwood pulp. The bleached pulp is produced in two separate process lines, designated ''A'' and ''B.'' Groundwood pulp is produced in another separate process line. Logs and wood chips are received in the Woodyard area, where they are stored and processed for eventual use in the Pulp Mill or Groundwood Mill. The Pulp Mill consists of two separate, parallel Kraft chemical pulping process lines. Pulp produced at the Verso Jay Mill is either used in the paper mill area or dried in the Flash Dryer for storage and/or sale.

The Paper Mill consists of all the equipment and operations used to convert pulp to paper, including stock preparation, additive preparation, coating preparation, starch handling, finishing, storage, and paper machines. Non-condensable gases (NCGs) collected throughout the process from certain units in the Pulp Mill are sent to the lime kilns for combustion. The HVLC emission streams from certain other units are collected and sent to the Regenerative Thermal Oxidizer where they are incinerated. The Mill produces steam and electric power for mill operations with power boilers #1 and #2 and the waste fuel incinerator (WFI).

There are ten BART-eligible units at Verso Jay: (1) Power boiler #1; (2) power boiler #2; (3) waste fuel incinerator; (4) recovery boiler # 1; (5) recovery boiler #2; (6) smelt tank #1; (7) smelt tank #2; (8) lime kiln A; (9) lime kiln B; and (10) flash dryer.

ii. Power Boilers #1 and #2

Power boilers #1 and #2 are each rated at 680 MMBtu/hr and began operation in 1965 and 1967, respectively. Power boilers #1 and #2 are licensed to fire #6 fuel oil, #2 fuel oil, and used oil. The license currently limits the sulfur content of the fuel oil to no more than 1.8%, by weight. In addition, each boiler is equipped with LNBs. The operation of the two boilers is related to whether or not and how the cogeneration plant (three natural gas fired turbines) at the Mill is operating. Typically, when the cogeneration plant is operating, power boilers #1 and #2 do not operate. When the cogeneration plant is not operating, both boilers are operated; however, one boiler will typically carry the bulk of the load and the other boiler will be idled or run at a low load. There are occasions when both boilers operate at high load but this is not a routine operating mode.

(1) PM BART Review: Maine found that PM_{10} emissions from power boilers #1 and #2 are low and have minimal impact on visibility. The maximum modeled visibility impact on a Class I area due to PM_{10} is 0.03 dv. As the boilers are subject to the final ''Boiler MACT'' standards (40 CFR Part 63, Subpart DDDDD) promulgated in 2011, Maine did not further consider additional controls in its BART analysis and determined that compliance with these standards represents BART for power boilers #1 and #2.

(2) SO_2 BART Review: Maine identified and evaluated low sulfur fuels, wet scrubbing, dry scrubbing, and semi-dry scrubbing as potential control technologies in the reduction of SO_2 emissions from power boilers #1 and #2. Dry and semi-dry scrubbing control technologies were evaluated; however, the control effectiveness levels would be low (<25%), downstream particulate matter control devices such as an ESP and/or fabric filter would need to be installed to collect and re-circulate the scrubbing material, and no applications of these technologies on fuel oil fired boilers like power boilers #1 and #2 were identified during research of potential control technologies. Low sulfur fuels and wet scrubbing control technologies were found to be technically feasible and were evaluated further. Switching to natural gas, #2 fuel oil, and wet scrubbing were estimated to cost between $2,200 and $3,300 per ton SO_2 removed with a visibility improvement of 1.5 dv. Switching to 0.7% sulfur #6 fuel oil was estimated to cost $631 per ton SO_2 removed with a visibility improvement of 0.9 dv.

The cost effectiveness numbers above are based on the highest estimated two year average of annual emissions between 2002 and 2008. In recent years (2008 and 2009) these boilers have been operating close to only 20% of the time. This would result in an actual cost effectiveness for wet scrubbing of between $4,920 and $7,133 per ton of SO_2 removed. The use of low sulfur fuels or a wet scrubber has the potential to reduce visibility impacts from power boilers #1 and #2 by a perceptible amount; however, there are significant cost differences among the three low sulfur containing fuels evaluated by Maine and the wet scrubber. Maine concluded that the use of 0.7% sulfur by weight #6 fuel oil is a feasible and justifiable cost at $631 per ton of SO_2 reduced. The incremental cost of switching to natural gas from 0.7% sulfur by weight #6 fuel oil is $7,492 per ton and the incremental cost of switching to wet scrubbing from 0.7% sulfur by weight #6 fuel is $4,811 per ton. Maine determined that these costs were not justifiable for an additional 0.6 dv improvement. In addition, Maine's low sulfur legislation will require the facility to use 0.5% sulfur by weight #6 oil by 2018. At that time, the price of the 0.5% sulfur by weight oil will be reduced due to increased supply to the State. Therefore, Maine determined that the use of lower sulfur (0.7% sulfur by weight) #6 fuel oil in place of the higher

sulfur (1.8% sulfur by weight) #6 fuel oil currently fired, represents BART for control of SO_2 emissions from power boilers #1 and #2.

(3) NO_X BART Review: Maine identified and evaluated SCR, LNB, SNCR, and combustion control methods (including an overfire air (OFA) system and a flue gas recirculation (FGR) system) as potential control technologies for the reduction of NO_X emissions from power boilers #1 and #2. SCR and SNCR control technologies were found to be technically feasible and were evaluated further. LNBs are currently installed and used on power boilers #1 and #2, and are estimated to provide a 15% reduction in NO_X emissions, so were not evaluated further. Combustion control methods were evaluated; however, none were found to be viable control options for power boilers #1 and #2. Maine found that the size and design of power boilers #1 and #2 would provide little room for the installation of an overfire air system and that the application of a flue gas recirculation system would result in minimal reductions (7% to 15%) in NO_X emissions. The cost effectiveness of SCR is $5,271 per ton NO_X removed with a visibility improvement of 1.7 dv. The cost effectiveness of SNCR is $5,973 per ton NO_X removed for a visibility improvement of 1.4 dv.

The cost effectiveness numbers presented above are based on controlling NO_X emissions from power boilers #1 and #2 from the highest estimated two-year average annual emissions between 2002 and 2008. In recent years (2008 and 2009) these boilers have been operating close to only 20% of the time, which for example, would result in an actual cost effectiveness of $16,313 per ton of NO_X removed with the installation of SCR. Although the use of SCR or SNCR has the potential to reduce visibility impacts by a perceptible amount, Maine concluded that the cost effectiveness levels are not economically justifiable based on the limited use of power boilers #1 and #2 in recent years. Therefore, Maine determined that the current use of LNBs represents BART for control of NO_X emissions from power boilers #1 and #2 and that no additional level of control is justifiable as BART.

iii. Waste Fuel Incinerator Boiler

The waste fuel incinerator (WFI) is rated at 480 MMBtu/hr on biomass and 240 MMBtu/hr on oil and began operation in 1976. While the WFI primarily fires biomass, fuel oils (#6 and #2 fuel oils, waste oil, and oily rags) can also be fired in the boiler. Sulfur dioxide and particulate matter emissions are controlled using a variable throat venturi scrubber and demister arrangement. When #6 fuel oil is fired in significant amounts, caustic is used in the wet scrubber to meet the applicable SO_2 emission limit. In addition, the WFI is equipped with a combustion system designed to ensure the optimal balance between control of NO_X and limitation of CO and VOC.

(1) PM BART Review: The maximum modeled visibility impact due to PM_{10} from the WFI is 0.06 dv. The WFI is subject to EPA's ''Boiler MACT'' standards (40 CFR Part 63, Subpart DDDDD). Maine determined that current controls represent BART.

(2) SO_2 Bart Review: Maine identified and evaluated low sulfur fuels, wet scrubbing, dry scrubbing, and semi-dry scrubbing as potential control technologies in the reduction of SO_2 emissions from the WFI. While using low sulfur fuels is technically feasible, Maine believes that it is not a practically feasible option for the WFI based on the limited amount of fuel oil typically used in the boiler (less than 10% of the annual fuel oil heat input capacity). The WFI currently uses a water based wet scrubbing system for PM control with the addition of caustic to meet SO_2 emission limits when firing #6 fuel oil in significant amounts. Dry and semi-dry scrubbing control technologies were not considered by Maine to be either practical or technically feasible for the WFI due to the fact that they could not find any applications of these technologies on any other biomass-fired grate type boilers like the WFI. Maine also states that removing the existing wet scrubber and replacing it with a dry or semi-dry scrubbing system and a new ESP and/or fabric filter would be costly. The only remaining viable SO_2 control technology (adding caustic to the existing wet scrubbing system) has a cost effectiveness of $21,800 per ton SO_2 removed with an expected visibility improvement of less than 0.01 dv.

The WFI has very low baseline SO_2 emissions (~50 tons per year) and a maximum modeled SO_2 visibility impact of less than 0.01 dv, due to the inherent low sulfur content and alkalinity of the primary fuel (biomass) and the small amount of fuel oil used in the WFI. In addition, during the limited amount of time that #6 fuel oil is used to provide a significant portion of the heat input to the WFI, caustic is added to the wet scrubber to control SO_2 emissions. Therefore, Maine determined that additional control of SO_2 emissions from the WFI cannot be justified as BART due to the imperceptible effect it would have on visibility. Maine concluded that current controls represent BART for this unit.

(3) NO_X BART Review: Maine identified and evaluated SCR, LNB, SNCR, and combustion control methods (including an overfire air system and FGR) as potential control technologies in the reduction of NO_X emissions from the WFI. SCR and SNCR control technologies were found to be technically feasible and were evaluated further. Because the WFI primarily fires biomass on the grate, LNBs would not be effective for the majority of the time that the WFI operates. Combustion control methods were evaluated; however, none were found to be viable control options for the WFI due to the limited NO_X removal potential (<15%), potential impacts to other pollutants and boiler equipment, and the limited amount of room available for the installation of control equipment. Maine determined that SCR, SNCR and FGR have a cost effectiveness ranging from $4,676 to $17,010 per ton NO_X removed, with capital costs ranging from $3 to $7.6 million, and a resulting maximum visibility improvement of only 0.3 dv.

Maine concluded that the cost effectiveness levels are not economically justifiable for any of the control technologies evaluated given the maximum visibility improvement resulting from the use of these technologies. Maine determined that current combustion control represents BART for the WFI.

iv. Recovery Boilers #1 and #2

Recovery boilers #1 and #2 generate steam while regenerating chemicals used in the wood pulping process, and began operation in 1965 and 1976, respectively. Recovery boilers #1 and #2 have rated processing capacities of 2.50 and 3.44 million pounds per day of dry black liquor solids (BLS), respectively. Inorganic material (smelt) from the bottoms of the recovery boilers is used to produce green liquor, which is a solution of sodium sulfide and sodium carbonate salts, when it is dissolved in water or weak wash in the smelt dissolving tanks (#1 and #2). Although the recovery boilers primarily fire black liquor, they also fire small quantities of #2 and #6 fuel oils during startup, shutdown, and load stabilization conditions. The facility's license currently limits the sulfur content of the fuel oils to no more than 0.5%, by weight. Particulate matter emissions from both recovery boilers are currently controlled using an ESP.

(1) PM BART Review: PM emissions from recovery boilers #1 and #2 are currently controlled by an existing shared/common ESP. Recovery boilers

#1 and #2 are subject to MACT standards pursuant to 40 CFR Part 63, Subpart MM. Maine reviewed the RACT/BACT/LAER Clearinghouse (RBLC) and found that the current control configuration is the most effective control technology in use on recovery boilers and that there are no new, more effective technologies subsequent to the MACT standard that should be considered. Therefore, Maine determined current controls represent BART for recovery boilers #1 and #2.

(2) SO_2 BART Review: Maine has found that SO_2 emissions from recovery boilers #1 and #2 are variable due to several factors including black liquor properties (*e.g.,* sulfidity, sulfur to sodium ratio, heat value, and solids content), combustion air, liquor firing patterns, furnace design features, and type of startup fuel used. Although each recovery boiler has the ability to utilize #2 fuel oil, #6 fuel oil, and used/waste oil for startup, shutdown, and load stabilizing conditions, fuel oil firing is not a typical operating scenario for the recovery boilers. Maine identified and evaluated wet scrubbing, dry scrubbing, and semi-dry scrubbing as potential control technologies in the reduction of SO_2 emissions from recovery boilers #1 and #2; however, none of these technologies were found to have been applied to recovery boilers. Therefore, Maine determined that existing combustion controls represent BART for the control of SO_2 emissions from recovery boilers #1 and #2.

(3) NO_X BART Review: Kraft recovery boilers are a unique type of combustion source that inherently produce low levels of NO_X emissions. Most of the NO_X emissions produced by recovery boilers can be attributed to fuel based NO_X resulting from the partial oxidation of the nitrogen contained in the black liquor. Both recovery boilers #1 and #2 operate with a reducing zone in the lower part of the boiler and an oxidizing zone in the region of the liquor spray guns designed to provide secondary and tertiary staged combustion zones to complete combustion of the black liquor and minimize NO_X emissions.

Maine identified and evaluated SCR, LNB, SNCR, and combustion control methods (including the addition of a fourth level or quaternary air system and a flue gas recirculation system) as potential control technologies in the reduction of NO_X emissions from recovery boilers #1 and #2. SCR has not been applied or demonstrated successfully on any recovery boilers. It is unknown how the unique characteristics of recovery boiler exhaust gas constituents would react with a SCR catalyst, so there was no further evaluation of this control technology. Maine's evaluation of LNB technology is that it is not technically feasible to use this technology in the firing of black liquor given its tar-like qualities and the method by which it is injected into the boiler and that it would have minimal results in the firing of fuel oils given the small amounts of fuel oils that are fired in the recovery boilers. Maine's evaluation of SNCR control technologies resulted in a finding that there have been no applications of this technology on recovery boilers in the United States for a variety of reasons, including safety concerns associated with the risk of a smelt/water explosion should boiler tube walls corrode and leak near urea injection points and risks associated with an ammonia handling system for the SNCR. Operational concerns associated with SNCR were found to include the potential formation of acidic sulfates that could result in corrosion and a catastrophic boiler tube failure. Recovery boilers #1 and #2 are currently designed and operated using low excess air combined with three levels of staged combustion to minimize NO_X emissions. Additional combustion control methods were evaluated by Maine, however none were found to be viable control options for recovery boilers #1 and #2 due to the limited amount of space in the boilers to install a fourth or quaternary air system and due to the technical challenges re-circulating recovery boiler exhaust gases in a FGR system due to the unique characteristics of the exhaust gases. Therefore, Maine concluded that additional control of NO_X emissions from recovery boilers #1 and #2 are not technically feasible and the existing combustion control methods represent BART for these units.

v. Smelt Tanks #1 and #2

Smelt dissolving tank #1 is rated at 2.50 million pounds per day of dry BLS and began operation in 1965. Smelt dissolving tank #2 is rated at 3.44 million pounds per day of dry BLS and began operation in 1975. Inorganic materials from the recovery boiler floors drain into smelt dissolving tanks #1 and #2 as molten smelt. In the smelt dissolving tanks, the smelt is mixed with weak wash to form green liquor which is pumped to the causticizing area. SO_2 and PM_{10} emissions from smelt dissolving tank #1 are controlled with a dual-nozzle wet cyclonic scrubber which utilizes an alkaline scrubbing solution and was installed in 1983. SO_2 and PM_{10} emissions from smelt dissolving tank #2 are controlled with a triple-nozzle wet cyclonic scrubber which utilizes an alkaline scrubbing solution and was installed in 1976.

(1) PM BART Review: PM emissions from smelt dissolving tanks #1 and #2 are currently controlled by existing wet cyclonic scrubbers. Smelt dissolving tanks #1 and #2 are subject to MACT standards under 40 CFR Part 63, Subpart MM. After review of the RACT/BACT/LAER Clearinghouse, Maine determined that the current control configuration is the most current control technology in use on smelt dissolving tanks and represent BART for smelt dissolving tanks #1 and #2.

(2) SO_2 BART Review: Maine has found that SO_2 emissions from smelt dissolving tanks #1 and #2 are dependent on how much sulfur carries over from the respective recovery boilers with the smelt. Controlled smelt-water explosions in the smelt dissolving tanks can create SO_2 as a result of the oxidation of the sulfur in the smelt. SO_2 emissions from both smelt dissolving tanks combined are very low at approximately 5 tons per year. Maine determined that BART for SO_2 emissions from smelt dissolving tanks #1 and #2 is no additional control based on the following:

(1) SO_2 emissions from the smelt dissolving tanks during the BART baseline period were and are expected to continue to be extremely low (~5 TPY, combined); (2) the smelt dissolving tanks and associated scrubbers are designed and operated to minimize SO_2 emissions; (3) SO_2 emissions from the smelt dissolving tanks have a minimal impact on visibility (< 0.1 deciviews); and (4) additional control of SO_2 emissions from the smelt dissolving tanks would have a minimal impact on overall visibility.

(3) NO_X BART Review: Smelt Tanks #1 and #2 do not emit NO_X.

vi. Lime Kilns A and B

The ''A'' and ''B'' lime kilns process lime mud (calcium carbonate) from the causticizing area to regenerate calcium oxide. Inside the lime kilns, the lime mud is dried and heated to a high temperature where the lime mud is converted to lime. ''A'' and ''B'' lime kilns are each rated at an operating rate of 248 tons of calcium oxide per day and a heat input of 72 MMBtu/hr and began operation in 1965 and 1975, respectively. The lime kilns are licensed to fire #6 fuel oil, #2 fuel oil, propane, and used/waste oil. The facility's license currently limits the sulfur content of the fuel oil to no more than 1.8%, by weight. The ''A'' and ''B'' lime kilns also serve as an incineration device (control device) for select sources

of low volume high concentration (LVHC) non-condensable gases (NCG) from pulping operations at the mill. Particulate matter emissions are controlled from the ''A'' and ''B'' lime kilns using a fixed throat venturi scrubber.

(1) PM BART Review: PM_{10} emissions from the ''A'' and ''B'' lime kilns consist primarily of dust entrained from the combustion section of the kilns. This dust consists of sodium salts, calcium carbonate, and calcium oxide. PM_{10} emissions are currently controlled by existing venturi scrubbers. These units are also subject to MACT Standards under section 112 of the CAA, and 40 CFR Part 63, Subpart MM. Maine reviewed the RACT/BACT/LAER Clearinghouse and concluded that there are two control technologies that represent the most stringent PM control (ESPs and venturi scrubbers). Both ESPs and venturi scrubbers have been used to control PM emissions from lime kilns and both are capable of a high level of control. Maine determined that use of the existing venturi scrubbers to control PM_{10} emissions from the ''A'' and ''B'' represents BART for the following reasons: (1) The existing venturi scrubbers maintain compliance with the MACT emission limits; (2) the replacement of the existing venturi scrubbers with dry ESPs could increase SO_2 emissions from the lime kilns when compared to use of the venturi scrubbers; (3) the replacement of the existing venturi scrubbers with wet ESPs would result in high capital costs ($1.5 million per kiln); and (4)visibility impacts from the lime kilns are minimal (0.03–0.04 dv) and installation of additional control would result in inconsequential improvement in visibility.

(2) SO_2 BART Review: Maine has found that a significant portion of the SO_2 formed during the combustion process in the lime kilns is removed as the regenerated quicklime in the kilns functions as a scrubbing agent. In addition, the non-condensable gas (NCG) collection system is equipped with a scrubber that uses white liquor (sodium hydroxide or NaOH) and thus the sulfur loading from the NCGs is minimized. SO_2 emissions from both lime kilns combined are very low at less than 4 tons per year primarily due to the alkalinity of the lime. Maine determined that BART for SO_2 emissions from the ''A'' and ''B'' lime kilns is no additional control based on the following: (1) SO_2 emissions from the lime kilns during the BART baseline period were and are expected to continue to be extremely low (<4 TPY, combined); (2) there are no control technologies available for lime kilns that are more cost effective than the inherent scrubbing that occurs for SO_2 due to the alkalinity of the lime in the process; (3) SO_2 emissions from the smelt dissolving tanks have a minimal impact on visibility (<0.1 deciviews); and (4) additional control of SO_2 emissions from the lime kilns would have a minimal impact on overall visibility.

(3) NO_X BART Review: Maine identified and evaluated SCR, LNB, and SNCR as potential NO_X control technologies. Maine's evaluation of SCR and SNCR as potential NO_X control technologies revealed that they have not been installed on any lime kilns in the pulp and paper industry, and were also found to be technically infeasible. Maine's research with respect to lime kilns and LNB technology revealed that the technology is actually a combination of passive combustion control measures used to minimize NO_X formation primarily from thermal NO_X and to a lesser extent fuel NO_X. These combustion control measures include careful design of the fuel feed system in order to ensure proper mixing of the fuel with air and burner ''tuning'' or optimization which impacts fuel burning efficiency and overall flame length. Verso Androscoggin already incorporates burner ''tuning'' in the operation and maintenance of the ''A'' and ''B'' lime kilns to optimize the relationship between NO_X emissions and operating efficiency. Maine determined that the current use of LNB represents BART for control of NO_X emissions from ''A'' and ''B'' lime kilns and that no additional level of control is technically feasible. Maine also notes in the BART analysis that existing NO_X emissions from the ''A'' and ''B'' lime kilns have a minimal impact on visibility (< 0.1 deciviews) and that additional control of NO_X emissions would have a minimal impact on the overall improvement to visibility.

vii. Flash Dryer

The flash dryer is used to dry pulp for resale or for storage and future use on one of Verso Androscoggin's paper machines. The flash dryer has a rated heat input capacity of 84 MMBtu/hr and began operation in 1964. The flash dryer is licensed to fire #2 fuel oil, which contains a maximum sulfur content of 0.5%. Particulate matter emissions are controlled using a wet shower system and SO_2 emissions are limited through the firing of #2 fuel oil.

(1) PM BART Review: Particulate matter emissions from the flash dryer are currently controlled by the use of a wet shower system. Maine concluded that the application of add-on controls and the use of cleaner fuels are not practical considerations for controlling PM emissions from the flash dryers and that with potential visibility impacts from the flash dryer being extremely low, any emission reductions would have an inconsequential impact on visibility improvement (less than 0.1 dv). Therefore, Maine determined that current controls represent BART for the flash dryer.

(2) SO_2 BART Review: The flash dryer is limited by license conditions to firing #2 fuel oil with a maximum sulfur content of 0.5%, by weight and so has relatively low SO_2 emissions. Although Verso Androscoggin could replace the use of #2 fuel oil with lower sulfur containing fuels such as low sulfur (0.05%) diesel fuel or natural gas, the flash dryer is predicted to have peak visibility impacts of 0.1 deciviews or less. Therefore, Maine determined that current controls represent BART.

(3) NO_X BART Review: The flash dryer is not equipped with any NO_X control equipment. NO_X emissions from the flash dryer are primarily generated from the nitrogen component in the fuel oil. Verso Androscoggin currently uses good maintenance practices to minimize NO_X emissions from the flash dryer. Maine's investigation of conventional NO_X combustion controls (*e.g.,* LNB, OFA, and FGR) lead to a finding that they are either unavailable for installation on the flash dryer or are not feasible for a combustion source as small as the flash dryer. Therefore, Maine determined that controls are sufficient for BART.

viii. EPA Assessment

EPA finds that Maine's analyses and conclusions for the BART emission units located at the Verso Androscoggin facility are reasonable. EPA guidance gives the States wide latitude in the application of the five factors. EPA believes that Maine's approach is reasonable for determining that current controls are sufficient for recovery boilers #1 and #2, WFI, smelt tanks #1 and #2, lime kilns A and B, the flash dryer. EPA finds, with respect to the power boilers #1 and #2, that Maine's determination that natural gas, #2 oil, or wet scrubbing technology are not economically justifiable, is reasonable.[15]

[15] Maine's SIP revision submittal is unclear as to whether Maine judged the cost effectiveness of these technologies based on the longer, 2002–2008, timeframe or the shorter, 2008–2009, timeframe. States have broad discretion in setting BART, and EPA finds that Maine could have reasonably concluded that even the lower cost of these technologies under the 2002–2008 timeframe was not economically justifiable given the incremental visibility benefits associated with the more stringent technology.

EPA also finds that Maine's determination that #6 oil with 0.7% sulfur content and current NO_X controls represent BART is reasonable.[16] EPA has reviewed the Maine analyses and concluded they were conducted in a manner consistent with EPA's BART Guidelines.

f. Red Shield Environmental, LLC

i. Background

Red Shield operates a pulp mill in Old Town, Maine. Pulp production at the facility begins with wood chips entering the facility, where they are conveyed to, and ''cooked'' in an impregnation vessel followed by a digester. In the digester, white liquor is used to dissolve the lignin from around the wood fibers. The pulp from the digester is then washed in the brownstock washer system to remove residual spent cooking liquor. After bleaching the pulp to the desired brightness, it is the dried. There are two BART eligible units at the facility; recovery boiler #4, and the lime kiln. These units are similar to those already discussed above at SD Warren and Verso Androscoggin, and Maine similarly concluded that current controls represent BART at Red Shield Environmental.

ii. Recovery Boiler #4

Recovery boiler #4, manufactured by Babcock & Wilcox, was originally installed in 1971. However, in June of 1987, a smelt bed explosion damaged the boiler. Recovery boiler #4 was repaired and returned to operation by December of 1987. Recovery boiler #4 has the capability of firing black liquor, either alone or in combination with #6 fuel oil, and is limited to firing 2.57 MMlbs of black liquor solids per day. The total heat input capacity of firing #6 fuel alone in the boiler is 375 MMBtu/hr (2500 gal/hr). An ESP controls particulate matter from the unit.

(1) PM BART Review: Recovery boiler #4 is equipped with an ESP for particulate matter, and a limit of 0.028 grains per dry standard cubic foot (gr/dscf)[17] has been established pursuant to MACT, 40 CFR Part 63, Subpart MM. Therefore, Maine determined current controls were determined to represent BART.

(2) SO_2 BART Review: SO_2 emissions from the recovery boiler #4 are limited through the use of low sulfur (0.5% fuel sulfur content limit) as established by air emission license amendment A–180–71–Z–A and required by the facility's Part 70 air emission license (A–180–70–A–I). Therefore, Maine determined the current controls represent BART.

(3) NO_X BART Review: Recovery boiler #4 is subject to Maine's federally enforceable Chapter 138—Reasonably Available Control Technology for Facilities that Emit Nitrogen Oxides (69 FR 66748) which contains the applicable NO_X ppm limit (150 ppm). The unit is also subject to a best practical treatment (BPT) NO_X limit of 154.4 pounds per hour (lb/hr) when firing black liquor, and a 188.2 lb/hr limit when firing oil. The maximum visibility impact from this source on a Class I area is minimal, 0.2631 dv, 0.2070 dv impact due to NO_X. Therefore, Maine determined the current controls represent BART.

iii. Lime Kiln

The lime kiln, lime mud clarifier, storage tanks, precoat filter, and scrubber are all part of the lime kiln system. Lime mud ($CaCO_3$) from the recausticizing slaker system is processed back into lime (CaO) through the lime kiln system. The lime kiln was installed in 1974 and is controlled with a venturi scrubber system. The lime kiln burner has a rating of 64 MMBtu/hr and fires primarily #6 fuel oil with a 2% sulfur content. Propane is used only for the pilot flame. Low volume high concentration (LVHC) gases are also fired in the lime kiln.

(1) PM BART Review: The lime kiln is equipped with a venturi scrubber system for particulate matter, and is subject to 40 CFR Part 63, Subpart MM, which contains an applicable PM emission limit of 0.064 gr/dscf. However, 40 CFR Part 63, Subpart MM also allows Red Shield to propose an alternative PM limit (0.13 gr/dscf), which takes into account facility emissions from the #4 Recovery Boiler and #4 Smelt Tank. Maine also established an applicable PM emission limit of 32.9 lb/hr under Maine's BPT program. Therefore, Maine determined current controls represent BART.

(2) SO_2 BART Review: The lime kiln is subject to Maine's BPT with an applicable limit of 7.1 lb/hr. Therefore, Maine determined that current controls represent BART.

(3) NO_X BART Review: The lime kiln is subject to Maine's Chapter 138 which contains the applicable NO_X ppm limit (170 ppm on a dry basis). The applicable NO_X lb/hr emission limit is 36.0 lb/hr. The maximum visibility impact from this source on a Class I area is minimal, 0.1338 dv, 0.085 dv impact due to NO_X. Therefore, Maine determined that current controls represent BART.

iv. EPA Assessment

Under EPA Guidance, States have wide discretion as to how they assess the BART five factors. Visibility modeling indicates the maximum visibility impairment from the #4 recovery boiler and the lime kiln is 0.26 dv and 0.13 dv, respectively. The sources at Red Shield Environmental are similar to units at Verso Androscoggin and several other facilities. Maine analyzed the potential for add on controls for recovery boilers and lime kilns for Verso Androscoggin, finding additional controls for those units to be technologically infeasible. Based on that analysis, EPA finds that Maine's conclusion that the current controls are sufficient for BART is reasonable. EPA has reviewed the Maine analyses and concluded they were conducted in a manner consistent with EPA's BART Guidelines.

6. Enforceability of BART

As noted above, some of the BART units are subject to MACT standards that are federally enforceable. In addition, as part of the Maine's December 6, 2010 Regional Haze SIP submittal, Maine DEP included source specific permits which detail emission limits, and record keeping and reporting requirements associated with the installation of the identified BART controls. EPA is proposing to approve the submitted license conditions as part of this rulemaking action. If finalized, as proposed, these conditions will become federally enforceable.

E. Long-Term Strategy

As described in Section II. E of this action, the LTS is a compilation of state-specific control measures relied on by the state to obtain its share of emission reductions to support the RPGs established by Maine, New Hampshire, Vermont, and New Jersey, the nearby Class I area States. Maine's LTS for the

[16] The MANE–VU recommended limit for these types of units is 0.5% sulfur content. However, under a state provision, 38 M.R.S.A. § 603–A, sub-§ 8—that was not submitted as part of the SIP revision and is not currently being considered by EPA—Maine DEP is limited to either requiring 1% sulfur content or a 50% reduction. Because States have broad discretion in setting BART, EPA finds that requiring 0.7% sulfur content is reasonable; however it should be noted that under 38 M.R.S.A. § 603–A, sub-§ 2(A), which EPA is proposing to approve today, these units will be required to use 0.5% sulfur content fuel by January 1, 2018.

[17] The narrative that accompanies Maine's SIP revision submittal lists this limit as 0.044 gr/dscf. However, the associated Table 10–9 *BART Determination Summary for Red Shield Environmental, LLC* of the SIP submittal and the license amendment issued by Maine DEP that EPA is proposing to approve into Maine's SIP lists the limit as 0.028 gr/dscf. Therefore this limit is the enforceable limit.

first implementation period addresses the emissions reductions from federal, state, and local controls that take effect in the State from the baseline period starting in 2002 until 2018. Maine participated in the MANE–VU regional strategy development process. As a participant, Maine supported a regional approach towards deciding which control measures to pursue for regional haze, which was based on technical analyses documented in the following reports: (a) The MANE–VU Contribution report; (b) *Assessment of Reasonable Progress for Regional Haze in MANE–VU Class I Areas,* available at *www.marama.org/visibility/RPG/FinalReport/RPGFinalReport_070907.pdf;* c) *Five-Factor Analysis of BART–Eligible Sources: Survey of Options for Conducting BART Determinations,* available at *www.nescaum.org/documents/bart-final-memo-06-28-07.pdf;* and d) *Assessment of Control Technology Options for BART–Eligible Sources: Steam Electric Boilers, Industrial Boilers, Cement Plants and Paper, and Pulp Facilities,* available at *www.nescaum.org/documents/bart-control-assessment.pdf.*

The LTS was developed by Maine, in coordination with MANE–VU, identifying the emissions units within Maine that are currently likely have the largest impacts on visibility at nearby Class I areas, estimating emissions reductions for 2018, based on all controls required under federal and state regulations for the 2002–2018 period (including BART), and comparing projected visibility improvement with the uniform rate of progress for the nearby Class I area.

Maine's LTS includes measures needed to achieve its share of emissions reductions agreed upon through the consultation process with MANE–VU Class I States and includes enforceable emissions limitations, compliance schedules, and other measures necessary to achieve the reasonable progress goals established by New Hampshire, Vermont, and New Jersey for their Class I areas.

1. Emissions Inventory for 2018 With Federal and State Control Requirements

The emissions inventory used in the regional haze technical analyses was developed by MARAMA for MANE–VU with assistance from Maine. The 2018 emissions inventory was developed by projecting 2002 emissions, and assuming emissions growth due to projected increases in economic activity as well as applying reductions expected from federal and state regulations affecting the emissions of VOC and the visibility-impairing pollutants NO_X, PM_{10}, $PM_{2.5}$, and SO_2. The BART guidelines direct States to exercise judgment in deciding whether VOC and NH_3 impair visibility in their Class I area(s). As discussed further in Section IV.C.1 above, MANE–VU demonstrated that anthropogenic emissions of sulfates are the major contributor to $PM_{2.5}$ mass and visibility impairment at Class I areas in the Northeast and Mid-Atlantic region. It was also determined that the total ammonia emissions in the MANE–VU region are extremely small.

MANE–VU developed emissions inventories for four inventory source classifications: (1) Stationary point sources, (2) stationary area sources, (3) off-road mobile sources, and (4) on-road mobile sources. The New York Department of Environmental Conservation also developed an inventory of biogenic emissions for the entire MANE–VU region. Stationary point sources are those sources that emit greater than a specified tonnage per year, depending on the pollutant, with data provided at the facility level. Stationary area sources are those sources whose individual emissions are relatively small, but due to the large number of these sources, the collective emissions from the source category could be significant. Off-road mobile sources are equipment that can move but do not use the roadways. On-road mobile source emissions are automobiles, trucks, and motorcycles that use the roadway system. The emissions from these sources are estimated by vehicle type and road type. Biogenic sources are natural sources like trees, crops, grasses, and natural decay of plants. Stationary point sources emission data is tracked at the facility level. For all other source types, emissions are summed on the county level.

There are many federal and state control programs being implemented that MANE–VU and Maine anticipate will reduce emissions between the baseline period and 2018. Emission reductions from these control programs were projected to achieve substantial visibility improvement by 2018 at all of the MANE–VU Class I areas. To assess emissions reductions from ongoing air pollution control programs, BART, and reasonable progress measures, MANE–VU developed emissions projections for 2018 called ''Best and Final.'' The emissions inventory provided by the Maine DEP for the ''Best and Final'' 2018 projections is based on expected control requirements.

Maine relied on emission reductions from the following ongoing and expected air pollution control programs as part of the state's long term strategy. Maine's EGU Regulation (Chapter 145 NO_X Control Program) limits the NO_X emission rate to 0.22 lb NO_X/MMBtu for fossil fuel-fired units greater than 25 MW built before 1995 with a heat input capacity between 250 and 750 MMBtu/hr, and also limits the NO_X emission rate to 0.17 lb NO_X/MMBtu for fossil fuel-fired units greater than 25 MW built before 1995 with a heat input capacity greater than 750 MMBtu/hr.

Non-EGU point source controls in Maine include: 2-year, 4-year, 7-year, and 10-year MACT Standards; Combustion Turbine and Reciprocating Internal Combustion Engine (RICE) MACT; Industrial Boiler/Process Heater MACT.[18]

On July 30, 2007, the U.S. District Court of Appeals mandated the vacatur and remand of the Industrial Boiler MACT Rule.[19] This MACT was vacated since it was directly affected by the vacatur and remand of the Commercial and Industrial Solid Waste Incinerator (CISWI) Definition Rule. EPA proposed a new Industrial Boiler MACT rule to address the vacatur on June 4, 2010, (75 FR 32006) and issued a final rule on March 21, 2011 (76 FR 15608).

Maine's modeling included emission reductions from the vacated Industrial Boiler MACT rule. Maine did not redo its modeling analysis when the rule was re-issued. However, the expected reductions in SO_2 and PM resulting from both the vacated and revised MACT rule are a relatively small component of the Maine inventory. The expected emission reductions from the revised MACT rule are comparable to the modeled reductions from the vacated MACT rule. In addition, the new MACT rule requires compliance by 2014 and therefore the expected emission reductions will be achieved prior to the end of the first implementation period in 2018.

Controls on area sources expected in 2018 include the following Maine state regulations: architectural and industrial maintenance coatings (06–096 CMR Chapter 151) and solvent cleaning (06–096 CMR Chapter 130); mobile equipment repair and refinishing (06–096 CMR Chapter 153); and VOC control measures for portable fuel containers (06–096 CMR Chapter 155) and consumer products (06–096 CMR Chapter 152). All of these rules have been incorporated into the Maine SIP.

[18] The inventory was prepared before the MACT for industrial Boilers and Process Heaters was vacated. Control efficiency was assumed to be 4 percent for SO_2 and 40 percent for PM. The overall effects of including these reductions in the inventory are estimated to be minimal.

[19] *NRDC* v. *EPA,* 489F.3d 1250.

See www.epa.gov/region1/topics/air/sips/sips_me.html.

Controls on mobile sources expected in 2018 include: Stage I vapor recovery systems at gasoline dispensing facility in the state and Stage II vapor recovery at any gasoline dispensing facility in York, Cumberland, and Sagadahoc counties (06–096 CMR Chapter 118);[20] Federal On-Board Refueling Vapor Recovery (ORVR) Rule; Federal Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Requirements; Federal Heavy-Duty Diesel Engine Emission Standards for Trucks and Buses; and Federal Emission Standards for Large Industrial Spark-Ignition Engines and Recreation Vehicles.

Controls on non-road sources expected by 2018 include the following federal regulations: Control of Air Pollution: Determination of Significance for Nonroad Sources and Emission Standards for New Nonroad Compression Ignition Engines at or above 37 kilowatts (59 FR 31306, June 17, 1994); Control of Emissions of Air Pollution from Nonroad Diesel Engines (63 FR 56967, October 23, 1998); Control of Emissions from Nonroad Large Spark-Ignition Engines and Recreational Engines (67 FR 68241, November 8, 2002); and Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuels (69 FR 38958, June 29, 2004).

Tables 4 and 5 are summaries of the 2002 baseline and 2018 estimated emissions inventories for Maine. The 2018 estimated emissions include emissions growth as well as emission reductions due to ongoing emission control strategies and reasonable progress goals.

TABLE 7—2002 EMISSIONS INVENTORY SUMMARY FOR MAINE

[Tons per year]

	NH_3	NO_X	PM_{10}	$PM_{2.5}$	SO_2	VOC
Mobile	1,468	54,687	1,239	934	1,804	23,037
Nonroad	11	9,820	1,437	1,329	917	31,144
EGU Point	145	7,831	1,169	888	9,299	842
Non-EGU Point	700	12,108	6,120	4,899	14,412	4,477
Area	8,747	7,360	168,953	32,774	13,149	100,621
Biogenics	.....	2,018	.....	.....	.....	600,205
Totals	11,071	93,824	178,919	40,825	39,581	760,327

TABLE 8—2018 EMISSION INVENTORY SUMMARY FOR MAINE

[Tons per year]

	NH_3	NO_X	PM_{10}	$PM_{2.5}$	SO_2	VOC
Mobile	1,715	12,828	272	266	894	10,414
Nonroad	15	6,543	1,086	978	82	21,988
EGU Point	139	1,827	296	279	[21] 6,806	53
Non-EGU Point	859	14,137	7,477	5,922	13,082	5,708
Area	12,312	7,036	57,411	18,877	1,127	90,866
Biogenics	.....	2,018	.....	.....	.....	600,205
Totals	15,041	44,390	[22] 66,542	26,321	21,991	729,235

2. Modeling to Support the LTS and Determine Visibility Improvement for Uniform Rate of Progress

MANE–VU performed modeling for the regional haze LTS for the 11 Mid-Atlantic and Northeast States and the District of Columbia. The modeling analysis is a complex technical evaluation that began with selection of the modeling system. MANE–VU used the following modeling system:

• Meteorological Model: The Fifth-Generation Pennsylvania State University/National Center for Atmospheric Research (NCAR) Mesoscale Meteorological Model (MM5) version 3.6 is a nonhydrostatic, prognostic meteorological model routinely used for urban- and regional-scale photochemical, $PM_{2.5}$, and regional haze regulatory modeling studies.

• Emissions Model: The Sparse Matrix Operator Kernel Emissions (SMOKE) version 2.1 modeling system is an emissions modeling system that generates hourly gridded speciated emission inputs of mobile, non-road mobile, area, point, fire, and biogenic emission sources for photochemical grid models.

• Air Quality Model: The EPA's Models-3/Community Multiscale Air Quality (CMAQ) version 4.5.1 is a photochemical grid model capable of addressing ozone, PM, visibility and acid deposition at a regional scale.

• Air Quality Model: The Regional Model for Aerosols and Deposition

[20] Maine recently revised Chapter 118 to no longer require Stage II vapor recovery controls as of January 1, 2012. The previous version of the rule, however, is still currently included in the Maine SIP. Maine DEP is currently developing a SIP submittal for the revised rule which would ensure that Clean Air Act antibacksliding requirements are met. The SIP submittal must provide for equivalent or greater reductions than under the currently approved Stage II program. Therefore, consideration of these reductions in the model is reasonable.

[21] The 2018 Final Modeling Inventory SO_2 emissions estimates for the EGU sector includes adjustments to the EGU sector, including: (1) Assessing the implementation of BART at eight BART-eligible units, including Maine's Wyman Station; (2) implementation of the MANE–VU EGU strategy; (3) increases in SO_2 emissions to estimate the effect of emissions trading under the CAIR program; and (4) emissions increases in the MANE–VU region to reflect state's best estimates that some sources predicted by the IPM model to be closed would continue to operates, and information about where and when emission controls would be installed. The net result of these adjustments was an increase in SO_2 emissions from EGUs in Maine.

[22] An adjustment factor was applied during the processing of emissions data to restate fugitive particulate matter emissions. Grid models have been found to overestimate fugitive dust impacts when compared with ambient samples; therefore, an adjustment is typically applied to account for the removal of particles by vegetation and other terrain features. The summary emissions for PM_{10} in Table 8 reflect this adjustment. A comparable adjustment was not made to the PM_{10} value listed in Table 7.

(REMSAD) is a Eulerian grid model that was primarily used to determine the attribution of sulfate species in the Eastern US via the species-tagging scheme.

• Air Quality Model: The California Puff Model (CALPUFF), version 5 is a non-steady-state Lagrangian puff model used to access the contribution of individual States' emissions to sulfate levels at selected Class I receptor sites.

CMAQ modeling of regional haze in the MANE–VU region for 2002 and 2018 was carried out on a grid of 12x12 kilometer (km) cells that covers the 11 MANE–VU States (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont) and the District of Columbia and States adjacent to them. This grid is nested within a larger national CMAQ modeling grid of 36x36 km grid cells that covers the continental United States, portions of Canada and Mexico, and portions of the Atlantic and Pacific Oceans along the east and west coasts. Selection of a representative period of meteorology is crucial for evaluating baseline air quality conditions and projecting future changes in air quality due to changes in emissions of visibility-impairing pollutants. MANE–VU conducted an in-depth analysis which resulted in the selection of the entire year of 2002 (January 1–December 31) as the best period of meteorology available for conducting the CMAQ modeling. The MANE–VU States' modeling was developed consistent with EPA's *Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,* April 2007 (EPA–454/B–07–002), available at *www.epa.gov/scram001/guidance/guide/final-03-p.m.-rh-guidance.pdf*, and EPA document, *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* August 2005 and updated November 2005 (EPA–454/R–05–001), available at *www.epa.gov/ttnchie1/eidocs/eiguid/index.html* [hereinafter *EPA's Modeling Guidance*].

MANE–VU examined the model performance of the regional modeling for the areas of interest before determining whether the CMAQ model results were suitable for use in the regional haze assessment of the LTS and for use in the modeling assessment. The modeling assessment predicts future levels of emissions and visibility impairment used to support the LTS and to compare predicted, modeled visibility levels with those on the uniform rate of progress. In keeping with the objective of the CMAQ modeling platform, the air quality model performance was evaluated using graphical and statistical assessments based on measured ozone, fine particles, and acid deposition from various monitoring networks and databases for the 2002 base year. MANE–VU used a diverse set of statistical parameters from the EPA's Modeling Guidance to stress and examine the model and modeling inputs. Once MANE–VU determined the model performance to be acceptable, MANE–VU used the model to assess the 2018 RPGs using the current and future year air quality modeling predictions, and compared the RPGs to the uniform rate of progress.

In accordance with 40 CFR 51.308(d)(3), the Maine DEP provided the appropriate supporting documentation for all required analyses used to determine the State's LTS. The technical analyses and modeling used to develop the glide path and to support the LTS are consistent with EPA's RHR, and interim and final EPA Modeling Guidance. EPA finds the MANE–VU technical modeling to support the LTS and determine visibility improvement for the uniform rate of progress acceptable because the modeling system was chosen and used according to EPA Modeling Guidance. EPA agrees with the MANE–VU model performance procedures and results, and that the CMAQ is an appropriate tool for the regional haze assessments for the Maine LTS and regional haze SIP.

3. Meeting the MANE–VU ''Ask''

Maine in cooperation with the MANE–VU States developed the MANE–VU ''Ask'' to provide for reasonable progress towards achieving natural visibility at the MANE–VU Class I areas. The ''Ask'' included: (a) Timely implementation of BART requirements; (b) a 90 percent reduction in SO_2 emissions from each of the EGU stacks identified by MANE–VU comprising a total of 167 stacks; (c) adoption of a low sulfur fuel oil strategy; and (d) continued evaluation of other control measures to reduce SO_2 and NO_X emissions.

a. Timely Implementation of BART

The Maine BART determinations are discussed in section IV.D. In the modeling to demonstrate the sufficiency of the LTS to achieve the RPGs, Maine assumed a 1,442 ton per year reduction in SO_2 from SAPPI Somerset Power Boiler #1 due to BART control. Maine later determined that this unit was not BART eligible due to federally enforceable operation restrictions. However, Maine demonstrated that the SO_2 emissions reductions assumed in the modeling were reasonable since an additional, federally enforceable Title V license condition limits the amount of time boiler #1 can be used to incinerate total reduced sulfur gases. This limit compensates for the initial assumption of 1,442 ton per year reduction in SO_2.

b. Ninety Percent Reduction in SO_2 Emissions From Each of the Electric Generating Unit (EGU) Stacks Identified by MANE–VU Comprising a Total of 167 Stacks

Maine has one EGU stack identified by MANE–VU as a top contributor to visibility impairment in any of the MANE–VU Class I areas, FPL Energy Wyman Station boiler #4.

Boiler #4 is a peaking unit, and operated at an average annual capacity factor of less than 10 percent between 2002 and 2009, with annual SO_2 emissions of 1,170 tons in 2002.

Although FGD through the use of a wet, semi-dry or dry scrubber is technically feasible, this technology is cost prohibitive due to the low-capacity factor of this unit. In lieu of requiring add-on controls, Maine will be utilizing its low-sulfur fuels program meet the ''Ask'' at this unit. The Maine Low Sulfur Fuel Program requires the use of low-sulfur fuel containing no more than 0.5% sulfur beginning January 1, 2018, providing an 84 percent reduction in SO_2 emissions from its baseline emissions based on the use of 3.0% sulfur fuel.

c. Maine Low Sulfur Fuel Oil Strategy

The MANE–VU low sulfur fuel oil strategy includes two phases. Phase I of the strategy requires the reduction of sulfur in distillate oil to 0.05% sulfur by weight (500 parts per million (ppm)) by no later than 2014. Phase II requires reductions of sulfur in #4 residual oil to 0.25% sulfur by weight by no later than 2018; in #6 residual oil to 0.5% sulfur by weight by no later than 2018; and a further reduction in the sulfur content of distillate oil to 15 ppm by 2018.

The Maine Low Sulfur Oil Program, as established in statute at 38 M.R.S.A. § 603–A, sub-§ 2, instituted the following restrictions on fuel sulfur content for residual (#4, #5, and #6) and distillate oil:

(1) Beginning January 1, 2018; a person may not use residual oil with a sulfur content greater than 0.5% by weight;

(2) Beginning January 1, 2016, a person may not use distillate oil with a sulfur content greater than 0.005% by weight; and

(3) Beginning January 1, 2018, a person may not use distillate oil with a sulfur content greater than 0.0015% by weight.

In addition to the low sulfur requirements for distillate and residual oil, the program contains two elements not included in the MANE–VU Low Sulfur Oil Strategy. These elements are an exemption from the low sulfur content limits for sources using distillate fuel for manufacturing purposes and an equivalent alternative sulfur reduction program. Neither element is included in Maine's implementation plan submittal or approved by EPA.

Maine DEP does not believe that the low sulfur content limit exemption for manufacturing purposes will have a significant impact on the emission reductions afforded by this strategy for 2018 and beyond. While the exemption allows the continued use of high-sulfur [23] distillate oil at several manufacturing facilities, there are structural impediments to the actual use of these fuels. First, since there is only a limited potential market for high-sulfur distillate [24] the Maine DEP believes that this fuel will not be readily available, and will likely be more expensive than the more widely used 15 ppm distillate. Distributors and wholesalers of distillate fuels have noted that supplying high-sulfur distillate to a limited market introduces additional costs to their industry in the form of segregated storage and transportation/delivery systems, since even incidental contamination (co-mingling) can lead to non-compliance issues.[25]

Recognizing the potential for incidental contamination of ULSD, segregated storage and transportation/delivery systems are probably the only mechanisms that can assure compliance with federal and state ULSD requirements for the petroleum marketing industry. Given the low demand, and additional storage, transportation and delivery costs, Maine DEP does not believe that high sulfur distillate fuel will be widely used by the manufacturing sector in 2018 and later.[26]

[23] Containing 2,000–5,000 ppm sulfur.

[24] All other users of distillate (diesel) fuel in Maine will be subject to the 15 ppm sulfur limits (including general use and space heating at manufacturing facilities).

[25] For example, only 7 gallons of a 5,000 ppm sulfur fuel added to 7,500 gallons of ULSD would raise the sulfur content by 5.0 ppm.

[26] As noted above, Maine believes that future (2018) use of distillate fuel by the manufacturing sector will be limited due to cost and compliance concerns. Nevertheless, projected 2018 SO_2 emissions for Maine have been adjusted to address this exemption, and its impact on non-EGU point source emissions.

d. Continued Evaluation of Other Control Measures To Reduce SO_2 and NO_X Emissions

While Maine DEP continues to evaluate other control measures to reduce SO_2 and NO_X emission, Maine has adopted a program to reduce wood smoke emissions from outdoor wood and pellet boilers.

Maine's Control of Emissions From Outdoor Wood Boilers Rule (06–096 CMR 150) includes EPA's recommended Phase I particulate emission limit of 0.60 lbs/MMBtu/hr heat input as the standard for new outdoor wood-fired hydronic heaters (OWHH), also known as outdoor wood boilers, sold in Maine beginning April 1, 2008. Beginning April 1, 2010 new OWHH sold in Maine were required to meet a more stringent particulate emission standard of 0.32 lbs/MMBtu heat output (Phase II). The rule also establishes setback, stack height, particulate emission limits, and fuel requirements for outdoor wood boilers. Chapter 150 was subsequently amended to control the sale, installation, use, and siting of outdoor wood boilers that combust biomass pellets as fuel. Maine has submitted this rule to EPA for incorporation as part of the Regional Haze SIP.

Maine did not include emission reductions which result from the promulgation of the outdoor wood boilers rule in the visibility modeling to ensure reasonable progress. However, Maine is including this program in its regional Haze SIP as a SIP enhancement, or strengthening measure. EPA finds that Maine has sufficiently addressed the MANE–VU ''Ask'' by means of Maine's Low Sulfur Fuel oil strategy, control on Wyman Unit #4, the submitted BART determinations, and the outdoor wood boiler control strategy.

4. Additional Considerations for the LTS

40 CFR 51.308(d)(3)(v) requires States to consider the following factors in developing the long term strategy:

a. Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment;

b. Measures to mitigate the impacts of construction activities;

c. Emission limitations and schedules for compliance to achieve the reasonable progress goal;

d. Source retirement and replacement schedules;

e. Smoke management techniques for agricultural and forestry management purposes including plans as currently exist within the State for these purposes;

f. Enforceability of emissions limitations and control measures; and

g. The anticipated net effect on visibility due to projected changes in point area, and mobile source emissions over the period addressed by the long-term strategy.

a. Emission Reductions Including RAVI

No source in Maine has been identified as subject to RAVI. An exhaustive list of Maine's ongoing air pollution control programs is included in section IV.E.1.

b. Construction Activities

The Regional Haze Rule requires Maine to consider measures to mitigate the impacts of construction activities on regional haze. MANE–VU's consideration of control measures for construction activities is documented in ''Technical Support Document on Measures To Mitigate the Visibility Impacts of Construction Activities in the MANE–VU Region, Draft, October 20, 2006.''[27]

The construction industry is already subject to requirements for controlling pollutants that contribute to visibility impairment. For example, federal regulations require the reduction of SO_2 emissions from construction vehicles. At the state level, Maine currently regulates emissions of fugitive dust through Maine's Chapter 101, Visible Emissions rules, which establishes opacity limits for emissions from several categories of air contaminant sources, including fugitive emissions from construction activities. This rule has been incorporated into the Maine SIP. *See www.epa.gov/region1/topics/air/sips/me/2003_ME_ch101.pdf.*

MANE–VU's Contribution Assessment found that, from a regional haze perspective, crustal material generally does not play a major role. On the 20 percent best-visibility days during the 2000–2004 baseline period, crustal material accounted for 6 to 11 percent of the particle-related light extinction at the MANE–VU Class I Areas. On the 20 percent worst-visibility days, however, the ratio was reduced to 2 to 3 percent. Furthermore, the crustal fraction is largely made up of pollutants of natural origin (*e.g.,* soil or sea salt) that are not targeted under the Regional

[27] ''Technical Support Document on Measures to Mitigate the Visibility Impacts of Construction Activities in the MANE–VU Region, Draft, October 20, 2006'' has been provided as part of the docket to this proposed rulemaking.

Haze Rule. Nevertheless, the crustal fraction at any given location can be heavily influenced by the proximity of construction activities; and construction activities occurring in the immediate vicinity of MANE–VU Class I area could have a noticeable effect on visibility.

For this regional haze SIP, Maine concluded that its current regulations are currently sufficient to mitigate the impacts of construction activities. Any future deliberations on potential control measures for construction activities and the possible implementation will be documented in the first regional haze SIP progress report in 2012. EPA has determined that Maine has adequately addressed measures to mitigate the impacts of construction activities.

c. Emission Limitations and Schedules for Compliance To Achieve the RPG

In addition to the existing CAA control requirements discussed in section IV.E.1, Maine has adopted a low sulfur fuel oil strategy consistent with the MANE–VU ''Ask.'' The compliance date for Phase I will be in 2016 and the compliance date for Phase II will be in 2018.

d. Source Retirement and Replacement Schedule

Section 40 CFR 51.308(d)(3)(v)(D) of the Regional Haze Rule requires Maine to consider source retirement and replacement schedules in developing the long term strategy. Source retirement and replacement were considered in developing the 2018 emissions. EPA has determined that Maine has satisfactorily considered source retirement and replacement schedules as part of the LTS.

e. Smoke Management Techniques

The Regional Haze Rule requires States to consider smoke management techniques related to agricultural and forestry management in developing the long-term strategy. MANE–VU's analysis of smoke management in the context of regional haze is documented in ''Technical Support Document on Agricultural and Smoke Management in the MANE–VU Region, September 1, 2006.'' [28]

Maine does not currently have a Smoke Management Program (SMP). However, SMPs are required only when smoke impacts from fires managed for resources benefits contribute significantly to regional haze. The emissions inventory presented in the above-cited document indicates that agricultural, managed and prescribed burning emissions are very minor; the inventory estimates that, in Maine, those emissions from those source categories totaled 7.8 tons of PM_{10}, 6.7 tons of $PM_{2.5}$ and 0.5 tons of SO_2 in 2002, which constitute 0.08%, 0.2% and 0.006% of the total inventory for these pollutants, respectively.

Source apportionment results show that wood smoke is a moderate contributor to visibility impairment at some Class I areas in the MANE–VU region; however, smoke is not a large contributor to haze in MANE–VU Class I areas on either the 20% best or 20% worst visibility days. Moreover, most of the wood smoke is attributable to residential wood combustion. Therefore, it is unlikely that fires for agricultural or forestry management cause large impacts on visibility in any of the Class I areas in the MANE–VU region. On rare occasions, smoke from major fires degrades air quality and visibility in the MANE–VU area. However, these fires are generally unwanted wildfires that are not subject to SMPs. Therefore, an SMP is not required for Maine. EPA agrees that it is not necessary for Maine to have an Agricultural and Forestry Smoke Management Plan to address visibility impairment at this time.

f. Enforceability of Emission Limitations and Control Measures

All emission limitations included as part of Maine's Regional Haze SIP are either currently federally enforceable or will become federally enforceable if this action is finalized as proposed.

g. The Anticipated Net Effect on Visibility

MANE–VU used the best and final emission inventory to model progress expected toward the goal of natural visibility conditions for the first regional haze planning period. All of the MANE–VU Class I areas are expected to achieve greater progress toward the natural visibility goal than the uniform rate of progress, or the progress expected by extrapolating a trend line from current visibility conditions to natural visibility conditions.[29]

In summary, EPA is proposing to find that Maine has adequately addressed the LTS regional haze requirements.

F. Consultation With States and Federal Land Managers

On May 10, 2006, the MANE–VU State Air Directors adopted the Inter-RPO State/Tribal and FLM Consultation Framework that documented the consultation process within the context of regional phase planning, and was intended to create greater certainty and understanding among RPOs. MANE–VU States held ten consultation meetings and/or conference calls from March 1, 2007 through March 21, 2008. In addition to MANE–VU members attending these meetings and conference calls, participants from the Visibility Improvement State and Tribal Association of the Southeast (VISTAS) RPO, Midwest RPO, and the relevant Federal Land Managers were also in attendance. In addition to the conference calls and meeting, the FLMs were given the opportunity to review and comment on each of the technical documents developed by MANE–VU.

On May 27, 2010, Maine submitted a draft Regional Haze SIP to the relevant FLMs for review and comment pursuant to 40 CFR 51.308(i)(2). The FLMs provided comments on the draft Regional Haze SIP in accordance with 40 CFR 51.308(i)(3). The comments received from the FLMs were addressed and incorporated in Maine's SIP revision. Most of the comments were requests for additional detail as to various aspects of the SIP. These comments and Maine's response to comments can be found in the docket for this proposed rulemaking.

On August 12, 2010, Maine published a notice of agency rulemaking—proposal. This initiated a 30-day comment period and the opportunity to request a public hearing. Maine DEP received comments from EPA, the United States Department of Fish and Wildlife Service, the United States Department of Agriculture, and Florida Power and Light Company. Maine's response to comments is included as an attachment to the SIP submittal.

To address the requirement for continuing consultation procedures with the FLMs under 40 CFR 51.308(i)(4), Maine commits in their SIP to ongoing consultation with the FLMs on Regional Haze issues throughout the implementation.

EPA is proposing to find that Maine has addressed the requirements for consultation with States impacting Maine's Class I areas and with the Federal Land Managers.

G. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(d)(4) of the Regional Haze Rule requires a monitoring strategy

[28] ''Technical Support Document on Agricultural and Smoke Management in the MANE–VU Region, September 1, 2006'' has been included as part of the docket to this proposed rulemaking.

[29] Projected visibility improvements for each MANE–VU Class I area can be found in the NESCAUM document dated May 13, 2008, ''2018 Visibility Projections'' (*www.nescaum.org/documents/2018-visibility-projections-final-05-13-08.pdf/*).

for measuring, characterizing, and reporting regional haze visibility impairment that is representative of all mandatory Class I Areas within the State of Maine. The monitoring strategy relies upon participation in the IMPROVE network.

The State of Maine participates in the IMPROVE network, and will evaluate the monitoring network periodically and make those changes needed to be able to assess whether reasonable progress goals are being achieved in each of Maine's mandatory Class I Areas. In its SIP submittal, Maine is committing to continued support of the IMPROVE network at Acadia National Park and Moosehorn National Wildlife Refuge.

40 CFR 51.308(d)(4)(i) requires States to establish additional monitoring sites or equipment as needed to assess whether reasonable progress goals are being achieved toward visibility improvement at mandatory Class I areas. At this time, the current monitors are sufficient to make this assessment.

In its SIP submittal, Maine commits to meet the requirements under 40 CFR 51.308(d)(4)(iv) to report to EPA visibility data for each of Maine's Class I Areas annually.

The Regional Haze Rule (40 CFR 51.308(d)(4)(vi)) requires the inclusion of other monitoring elements, including reporting, recordkeeping, and other measures, necessary to assess and report visibility. While the Maine DEP has concluded that the current IMPROVE network provides sufficient data to adequately measure and report progress toward the goals set for MANE–VU Class I sites to which the State contributes, the State has also found additional monitoring information useful to assess visibility and fine particle pollution in the region in the past. Examples of these data include results from the MANE–VU Regional Aerosol Intensive Network (RAIN), which provides continuous, speciated information on rural aerosol characteristics and visibility parameters; the EPA Clean Air Status and Trends Network (CASTNET), which has provided complementary rural fine particle speciation data at non-class I sites; the EPA Speciation Trends Network (STN), which provides speciated, urban fine particle data to help develop a comprehensive picture of local and regional sources; state-operated rural and urban speciation sites using IMPROVE or STN methods; and the Supersites program, which has provided information through special studies that generally expands our understanding of the processes that control fine particle formation and transport in the region. Maine plans to continue to utilize these and other data—as they are available and fiscal realities allow—to improve their understanding of visibility impairment and to document progress toward our reasonable progress goals under the Regional Haze Rule.

H. Periodic SIP Revisions and Five-Year Progress Reports

Consistent with the requirements of 40 CFR 51.308(g), Maine has committed to submitting a report on reasonable progress (in the form of a SIP revision) to the EPA every five years following the initial submittal of its regional haze SIP. The reasonable progress report will evaluate the progress made towards the RPGs for the MANE–VU Class I areas, located in Maine, New Hampshire, Vermont, and New Jersey.

Section 40 CFR 51.308(f) requires the Maine DEP to submit periodic revisions to its Regional Haze SIP by July 31, 2018, and every ten years thereafter. Maine DEP acknowledges and agrees to comply with this schedule.

Pursuant to 40 CFR 51.308(d)(4)(v), Maine DEP will also make periodic updates to the Maine emissions inventory. Maine DEP plans to complete these updates to coincide with the progress reports. Actual emissions will be compared to projected modeled emissions in the progress reports.

Lastly, pursuant to 40 CFR 51.308(h), Maine DEP will submit a determination of adequacy of its regional haze SIP revision whenever a progress report is submitted. Maine's regional haze SIP states that, depending on the findings of its five-year review, Maine will take one or more of the following actions at that time, whichever actions are appropriate or necessary:

- If Maine determines that the existing State Implementation Plan requires no further substantive revision in order to achieve established goals for visibility improvement and emissions reductions, Maine DEP will provide to the EPA Administrator a negative declaration that further revision of the existing plan is not needed.
- If Maine determines that its implementation plan is or may be inadequate to ensure reasonable progress as a result of emissions from sources in one or more other state(s) which participated in the regional planning process, Maine will provide notification to the EPA Administrator and to those other state(s). Maine will also collaborate with the other state(s) through the regional planning process for the purpose of developing additional strategies to address any such deficiencies in Maine's plan.
- If Maine determines that its implementation plan is or may be inadequate to ensure reasonable progress as a result of emissions from sources in another country, Maine will provide notification, along with available information, to the EPA Administrator.
- If Maine determines that the implementation plan is or may be inadequate to ensure reasonable progress as a result of emissions from sources within the state, Maine will revise its implementation plan to address the plan's deficiencies within one year from this determination.

V. What action is EPA proposing to take?

EPA is proposing to approve of Maine's December 9, 2010 SIP revision as meeting the applicable implementing regulations found in 40 CFR 51.308. EPA is also proposing to approve the following license conditions and incorporate them into the SIP: Conditions (16) A, B, G, and H of license amendment A–406–77–3–M for Katahdin Paper Company issued on July 8, 2009; license amendment A–214–77–9–M for Rumford Paper Company issued on January 8, 2010; license amendment A–22–77–5–M for Verso Bucksport, LLC issued November 2, 2010; license amendment A–214–77–2–M for Woodland Pulp, LLC (formerly Domtar) issued November 2, 2010; license amendment A–388–77–2–M for FPL Energy Wyman, LLC & Wyman IV, LLC issued November 2, 2010; license amendment A–19–77–5–M for S. D. Warren Company issued November 2, 2010; license amendment A–203–77–11–M for Verso Androscoggin LLC issued November 2, 2010; and license amendment A–180–77–1–A for Red Shield Environmental LLC issued November 29, 2007.

EPA is proposing to approve Maine's low sulfur fuel oil legislation, 38 MRSA § 603–A, sub-§ 2(A), and to incorporate this legislation into the Maine SIP. Furthermore, EPA is also proposing to approve the following Maine state regulation and incorporate it into the SIP: Maine Chapter 150, Control of Emissions from Outdoor Wood Boilers.

VI. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act.

Accordingly, this proposed action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on Tribal governments or preempt Tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 15, 2011.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 2011–30650 Filed 11–28–11; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL REGISTER

Vol. 76 Tuesday,

No. 229 November 29, 2011

Part VII

Department of Housing and Urban Development

Consolidated Delegation of Authority for the Office of Fair Housing and Equal Opportunity; Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5544–D–01]

Consolidated Delegation of Authority for the Office of Fair Housing and Equal Opportunity

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: In this notice, the Secretary delegates authority pertaining to civil rights statutes, including the Fair Housing Act; Title VI of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; and Section 109 of the Housing and Community Development Act of 1974, as amended, to the Assistant Secretary for Fair Housing and Equal Opportunity. This delegation supersedes all prior delegations for the Office of Fair Housing and Equal Opportunity.

DATES: *Effective Date:* November 16, 2011.

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5204, Washington, DC 20410–0001, telephone number (202) 402–6322 (this is not a toll-free number). Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: This notice consolidates into one document the authority delegated by the Secretary to exercise authority pertaining to civil rights statutes, including the Fair Housing Act, 42 U.S.C. 3601 *et seq.;* Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000d *et seq.;* Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 791 *et seq.;* the Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101 *et seq.;* and Section 109 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. 5301 *et seq.,* to the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) and supersedes all prior delegations of authority from the Secretary to the Assistant Secretary for FHEO. This consolidated delegation of authority restates existing authority currently delegated by the Secretary to the Assistant Secretary for FHEO and does not provide any new authority.

Section A. Authority

The Secretary hereby delegates to the Assistant Secretary for FHEO authority and responsibility over the Department's civil rights agenda. In carrying out these responsibilities, the Assistant Secretary for FHEO shall have the authority to issue and waive regulations for the civil rights statutes and authorities enforced and/or administered by HUD and shall, among other duties:

1. Exercise the power and authority of the Secretary with respect to the Fair Housing Act, except the powers delegated to the General Counsel and to the Office of Administrative Law Judges;

2. Act as the ''responsible Department official'' in all matters relating to the carrying out of the requirements under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and its implementing regulations (24 CFR part 1), except authority pertaining to tenant selection plans under 24 CFR 1.4(b)(2)(ii);

3. Act as the ''responsible civil rights official'' and the ''reviewing civil rights official,'' as provided in HUD's implementing regulations for Section 504 of the Rehabilitation Act of 1973 (24 CFR part 8);

4. Exercise the power and authority of the Secretary with respect to the administration and enforcement of the nondiscrimination provisions contained in Section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309) and act as the ''responsible civil rights official'' and the ''reviewing civil rights official,'' as provided in HUD's implementing regulations for Section 109 (24 CFR part 6);

5. Exercise the power and authority of the Secretary with respect to the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107) and its implementing regulations in 24 CFR part 146 (The authority delegated in this notice does not include authority as provided in 24 CFR 146.39, 146.47(a), and 146.49); and

6. Exercise the power and authority to determine whether an applicant for, or participant in, a HUD program is complying with the civil rights related program requirements (CRRPRs). CRRPRs are requirements of HUD programs relating to civil rights contained in laws and regulations pertaining to the particular program, general civil rights statutes, notices of funding availability (NOFAs), Mortgagee Letters, or by other agreement between the Assistant Secretary for FHEO and the Assistant Secretary who has been delegated authority over the particular program.

7. Exercise all power and authority under the Fair Housing provisions of the Federal Housing Enterprises Financial Safety and Soundness Act (FHEFSSA) at 12 U.S.C. 4545 and under the implementing regulations at 24 CFR part 81.

Section B. Authority Excepted

The authority delegated in this document does not include the authority to sue or be sued.

Section C. Authority to Redelegate

The Assistant Secretary for FHEO is authorized to redelegate to employees of HUD any of the power and authority delegated to him/her, including the authority to act as the ''responsible Department official,'' ''responsible civil rights official,'' and the ''reviewing civil rights official.'' The Assistant Secretary for FHEO may also authorize successive redelegations. The Assistant Secretary for FHEO may not redelegate the authority to issue or waive regulations.

Section D. Authority Superseded

This delegation supersedes all previous delegations of authority from the Secretary to the Assistant Secretary for FHEO.

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: November 16, 2011.

Shaun Donovan,

Secretary.

[FR Doc. 2011–30752 Filed 11–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5544–D–02]

Order of Succession for the Office of Fair Housing and Equal Opportunity

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of Order of Succession.

SUMMARY: In this notice, the Assistant Secretary for Fair Housing and Equal Opportunity designates the Order of Succession for the Office of Fair Housing and Equal Opportunity. This Order of Succession supersedes all previous Orders of Succession for the Office of Fair Housing and Equal Opportunity.

DATES: *Effective Date:* November 16, 2011.

FOR FURTHER INFORMATION CONTACT: Everard B. Mattox, Administrative Officer, Resource Management Division, Office of Fair Housing and Equal Opportunity, Department of Housing

and Urban Development, 451 Seventh Street SW., Room 5124, Washington DC 20410, telephone number (202) 708–2701. (This is not a toll-free number.) This number may be accessed through TTY by calling the toll-free Federal Relay Service at 1–(800)–877–8339.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for the Office of Fair Housing and Equal Opportunity is issuing this Order of Succession of officials authorized to perform the functions and duties of the Office of Fair Housing and Equal Opportunity when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for the Office of Fair Housing and Equal Opportunity is not available to exercise the powers or perform the duties of the office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes all previous Orders of Succession for the Office of Fair Housing and Equal Opportunity.

Accordingly, the Assistant Secretary for the Office of Fair Housing and Equal Opportunity designates the following Order of Succession:

Section A. Order of Succession

Subject to the provisions of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for the Office of Fair Housing and Equal Opportunity for the Department of Housing and Urban Development is not available to exercise the powers or perform the duties of the Assistant Secretary for the Office of Fair Housing and Equal Opportunity, the following officials within the Office of Fair Housing and Equal Opportunity are hereby designated to exercise the powers and perform the duties of the Office, including the authority to waive regulations:

(1) General Deputy Assistant Secretary for Fair Housing and Equal Opportunity;

(2) Deputy Assistant Secretary for Enforcement and Programs;

(3) Deputy Assistant Secretary for Operations and Management;

(4) Director, Office of Policy, Legislative Initiatives and Outreach;

(5) Director, Office of Enforcement;

(6) Director, Office of Programs; and

(7) Director, Office of Management, Planning and Budget.

These officials shall perform the functions and duties of the office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his/hers in this order, are unable to act by reason of absence, disability, or vacancy in office.

Section B. Authority Superseded

This Order of Succession supersedes all previous Orders of Succession for the Assistant Secretary for Fair Housing and Equal Opportunity.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 16, 2011.

John Trasviña,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2011–30754 Filed 11–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5544–D–03]

Redelegation of Administrative Authority for Title VI of the Civil Rights Act of 1964

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) supersedes all redelegations of authority under Title VI of the Civil Rights Act of 1964 made within the Office of the Assistant Secretary for FHEO and retains and redelegates this authority to act as the ''responsible Department official,'' with noted exceptions, to the General Deputy Assistant Secretary, who in turn, retains and redelegates this authority, with noted exceptions to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement, Director of Systemic Investigations and the FHEO Region Directors.

DATES: *Effective Date:* November 16, 2011.

FOR FURTHER INFORMATION CONTACT: Sara Pratt, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5204, Washington, DC 20410–0001, telephone (202) 402–6322. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: By separate notice published in today's **Federal Register,** the Secretary delegates to the Assistant Secretary for FHEO authority pertaining to civil rights statutes. Included in that consolidated delegation is, all authority to act as the ''responsible Department official'' in all matters relating to the carrying out of the requirements under Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) and its implementing regulations (24 CFR. part 1) except authority pertaining to tenant selection plans under 24 CFR 1.4(b)(2)(ii).

In this redelegation, the Assistant Secretary for FHEO supersedes all previous redelegations and retains and redelegates the authority to act as the ''responsible Department official'' under Title VI of the 1964 Civil Rights Act, and its implementing regulations, and now retains and redelegates this authority as follows:

Section A. Authority Redelegated

With certain exceptions noted in Section B, the Assistant Secretary for FHEO redelegates to the General Deputy Assistant Secretary for FHEO the authority, under Title VI as provided in 24 CFR part 1, to act as the ''responsible Department official'' in matters delegated to the Assistant Secretary for FHEO, including the authority to further redelegate this authority. The General Deputy Assistant Secretary for FHEO retains and further redelegates this authority, with noted exceptions in Section B, to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement, Director of the Office of Systemic Investigations, and the FHEO Region Directors.

Section B. Authority Excepted

The authority redelegated by the Assistant Secretary in this notice does not include the authority to issue or to waive regulations. The authority redelegated by the General Deputy Assistant Secretary for FHEO does not include the authority under 24 CFR 1.8(a) to refer to the Department of Justice (DOJ) unresolved findings of non-compliance or seek other means of compliance, the authority under 24 CFR 1.8(c) to terminate, refuse to grant, or refuse to continue federal financial assistance, or the authority under 24 CFR 1.8(d) to determine that compliance cannot be effectuated by informal means and does not include authority to further redelegate.

Section C. Delegations of Authority Superseded

All prior redelegations of authority under Title VI of the Civil Rights Act of

1964 made by the Assistant Secretary for FHEO are superseded.

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 16, 2011.

John Trasviña,

Assistant Secretary for Fair Housing and Equal Opportunity.

Bryan Greene,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2011–30756 Filed 11–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5544–D–04]

Redelegation of Administrative Authority for Title I, Section 109 of the Housing and Community Development Act of 1974

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) supersedes all prior redelegations of authority from the Assistant Secretary for FHEO under Title I, Section 109 of the Housing and Community Development Act of 1974, and redelegates certain authority, to FHEO headquarters and Region staff.

DATES: *Effective Date:* November 16, 2011.

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5204, Washington, DC 20410–0001, telephone (202) 402–6322. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: By separate notice published in today's **Federal Register,** the Secretary delegates to the Assistant Secretary for FHEO authority pertaining to civil rights statutes. Included in that consolidated delegation is, with certain exceptions, the authority to act under Title I, Section 109 of the Housing and Community Development Act of 1974 (42 U.S.C. 5309). The provisions of Section 109 are implemented through HUD's regulations in 24 CFR part 6. (*See* also 24 CFR 6.3, in which the ''Responsible Official'' is defined as the Assistant Secretary for FHEO (or the Assistant Secretary's designee).

In this notice, the Assistant Secretary for FHEO, supersedes all previous redelegations and retains and redelegates the authority to act as the ''Responsible Official'' under Title I Section 109 of the Housing and Community Development Act of 1974, and its implementing regulations subject to certain exceptions.

Section A. Authority Redelegated

The Assistant Secretary for FHEO retains and, with noted exception, redelegates to the General Deputy Assistant Secretary for FHEO the authority to act as the ''Responsible Official'' under Section 109, only as provided in 24 CFR 6.10 and 6.11. This includes the authority to further redelegate. The General Deputy Assistant Secretary for FHEO retains and, with noted exception, further redelegates these authorities to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement, FHEO Region Directors and the Director of the Office of Systemic Investigations.

Section B. Authority Excepted

The authority redelegated by the Assistant Secretary in this notice does not include the authority to issue or to waive regulations or the authority under 24 CFR 6.13. The authority delegated by the General Deputy Assistant Secretary does not include the authority to further redelegate. As to the FHEO Region Directors and the Director of Systemic Investigations, the authority delegated does not include the authority under 24 CFR 6.11(c) to review letters of finding.

Section C. Delegations of Authority Superseded

All prior redelegations of the authority within the Office of the Assistant Secretary for FHEO under Section 109 of the Housing and Community Development Act of 1974 are superseded.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 16, 2011.

John Trasviña,

Assistant Secretary for Fair Housing and Equal Opportunity.

Bryan Greene,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2011–30757 Filed 11–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5544–D–05]

Redelegation of Authority Under the Age Discrimination Act of 1975

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) supersedes all prior redelegations of authority made within the Office of the Assistant Secretary for FHEO under the Age Discrimination Act of 1975, and retains and redelegates this authority, with noted exceptions, to the General Deputy Assistant Secretary for FHEO, who in turn redelegates certain authority to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement and FHEO Region Directors.

DATES: *Effective Date:* November 16, 2011.

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5204, Washington, DC 20410–0001, telephone (202) 402–6322. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: By separate notice published in today's **Federal Register,** the Secretary delegates to the Assistant Secretary for FHEO authority pertaining to civil rights statutes. Included in that consolidated delegation is the authority to act under the Age Discrimination Act of 1975. In this notice, the Assistant Secretary for FHEO supersedes prior redelegations and retains and, with noted exceptions, redelegates authority under the Age Discrimination Act to the General Deputy Assistant Secretary for FHEO. The General Deputy Assistant Secretary for FHEO, in turn, redelegates certain authority to certain FHEO headquarters and region staff.

Accordingly, the Assistant Secretary for FHEO and the General Deputy Assistant Secretary for FHEO redelegate authority as follows:

Section A. Authority Redelegated

The Assistant Secretary for FHEO retains and, with noted exceptions, redelegates to the General Deputy Assistant Secretary for FHEO authority to act under the Age Discrimination Act of 1975 and its implementing regulations in 24 CFR part 146 .The authority delegated in this notice does not include authority as provided in 24 CFR 146.39, 146.47(a), and 146.49. This includes the authority to further redelegate authority. The General Deputy Assistant Secretary for FHEO retains and, with noted exceptions, redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement, and the FHEO Region Directors.

Section B. Authority Excepted

The authority redelegated by the Assistant Secretary does not include the authority to issue or waive regulations. The authority redelegated by the General Deputy Assistant Secretary does not include the authority to further redelegate.

Section C. Authority Superseded

All prior redelegations of authority made within the office of the Assistant Secretary for FHEO under the Age Discrimination Act of 1975 are superseded.

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 16, 2011.

John Trasviña,

Assistant Secretary for Fair Housing and Equal Opportunity.

Bryan Greene,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2011–30759 Filed 11–28–11; 8:45 a.m.]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5544–D–06]

Redelegation of Authority for the Civil Rights Related Program Requirements of HUD Programs

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) supersedes all prior redelegations of authority made within the Office of the Assistant Secretary for FHEO regarding civil rights related program requirements (CRRPR) of HUD programs to FHEO staff and retains and redelegates this authority, with noted exceptions, to the General Deputy Assistant Secretary of FHEO, Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Programs, and the FHEO Region Directors.

DATES: *Effective Date:* November 16, 2011.

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW Room 5204, Washington, DC 20410–0001, telephone (202) 402–6322. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: By separate notice published in today's **Federal Register**, the Secretary delegates to the Assistant Secretary for FHEO authority pertaining to civil rights statutes. Included in the consolidated delegation is certain authority regarding the Department's civil rights related program requirements. (60 FR 14294–01, March 16, 1995). In this notice, the Assistant Secretary for FHEO supersedes all prior redelegations of authority made within the Office of the Assistant Secretary for FHEO and retains and redelegates the authority regarding civil rights related program requirements of HUD programs to the General Deputy Assistant Secretary for FHEO, Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Programs and the FHEO Region Directors.

Accordingly, the Assistant Secretary for FHEO delegates authority as follows:

Section A. Authority Redelegated

With certain exceptions noted in Section B, the Assistant Secretary for FHEO retains and redelegates to the General Deputy Assistant Secretary for FHEO all authority delegated to the Assistant Secretary for FHEO regarding civil rights related program requirements of HUD programs. This includes the authority to further redelegate. The General Deputy Assistant Secretary retains and redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Programs, and the FHEO Region Directors. In the event that the FHEO Region Director and the Field Office Program Official who has been redelegated authority to make funding decisions are not able to agree on the status of an applicant or participant with respect to a CRRPR, the matter shall be forwarded to Headquarters and the decision shall be made jointly by the Assistant Secretary for Fair Housing and Equal Opportunity and the Program Assistant Secretary with authority over the Field Office Program Official. If the Assistant Secretaries are unable to agree, the matter shall be resolved by the Secretary of HUD.

Section B. Exceptions to Redelegation

The authority delegated by the Assistant Secretary does not include the authority to issue or to waive regulations. The Authority redelegated from the General Deputy Assistant Secretary does not include the authority to further redelegate.

Section C. Authority Superseded

All prior redelegations of authority made by the Assistant Secretary for FHEO regarding civil rights related program requirements of HUD programs made within the Office of the Assistant Secretary for FHEO are superseded.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 16, 2011.

John Trasviña,

Assistant Secretary for Fair Housing and Equal Opportunity.

Bryan Greene,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2011–30760 Filed 11–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5544–D–07]

Redelegation of Fair Housing Assistance Program Authority

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) supersedes all prior redelegations of authority made within the Office of the Assistant Secretary for FHEO under the Fair Housing Assistance Program with the exception of redelegation of authority to the FHEO Region Directors, as set forth

in 24 CFR 115.101(b). The Assistant Secretary for FHEO redelegates the authority in 24 CFR 115.101(b) and other authority, as set forth in this notice, to the General Deputy Assistant Secretary.

DATES: *Effective Date:* November 16, 2011.

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5204, Washington, DC 20410–0001, telephone (202) 402–6322. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: Through regulation (24 CFR 115.101(a)), the Secretary delegated the authority and responsibility for administering the Fair Housing Assistance Program, as provided in 24 CFR part 115, to the Assistant Secretary for FHEO. Also through regulation (24 CFR 115.101(b)), the Assistant Secretary for FHEO retained and redelegated this authority to each FHEO Region Director. Through this notice, the Assistant Secretary for FHEO retains and redelegates this authority to the General Deputy Assistant Secretary for FHEO.

Section A. Authority Redelegated

The Assistant Secretary for FHEO retains and redelegates the authority and responsibility for administering the Fair Housing Assistance Program, as provided in 24 CFR part 115 subparts A, B and C, to the General Deputy Assistant Secretary for FHEO with the exception of issuing and waiving regulations.

The General Deputy Assistant Secretary retains and redelegates the authority and responsibility for administering the Fair Housing Assistance Program, as provided in 24 CFR part 115 subparts A, B and C, with, the exception of making final decisions concerning the granting and maintenance of substantial equivalency certification and interim certification in 24 CFR part 115, subpart B, to the Deputy Assistant Secretary for Enforcement and Programs, the Director of the Office of Enforcement, and FHEO Region Directors.

Section B. Authority To Further Redelegate

The General Deputy Assistant Secretary for FHEO may redelegate the authority provided in Section A of this notice. The Deputy Assistant Secretary for Enforcement and Programs, the Director of the Office of Enforcement and FHEO Region Directors may not redelegate the authority provided in Section A of this notice.

All prior redelegations of authority made within the Office of the Assistant Secretary for FHEO to administer the Fair Housing Assistance Program are superseded with the exception of the delegation of authority set forth in 24 CFR 115.101(b).

Authority: Section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 16, 2011.

John Trasviña,

Assistant Secretary for Fair Housing and Equal Opportunity.

Bryan Greene,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2011–30761 Filed 11–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5544–D–08]

Redelegation of Authority Under Section 561 of the Housing and Community Development Act of 1987

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) supersedes all prior redelegations of authority made within the office of the Assistant Secretary for FHEO under Section 561 of the Housing and Community Development Act of 1987, the Fair Housing Initiatives Program (FHIP), and retains and with noted exception redelegates this authority to the General Deputy Assistant Secretary for FHEO, who retains and further redelegates certain authority to FHEO headquarters and region office staff.

DATES: *Effective Date:* November 16, 2011

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5204, Washington, DC 20410–0001, telephone (202) 402–6322. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Fair Housing Initiatives Program contained in the Housing and Community Development Act of 1987, 42 U.S.C. 3616a, authorizes the Secretary to provide funding to state and local governments or their agencies, public or private non-profit organizations or other public or private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices. This enables the recipients to carry out activities designed to obtain enforcement of the rights granted by the federal Fair Housing Act or by substantially equivalent state or local fair housing laws. This also enables the recipients to carry out education and outreach activities designed to inform the public of their rights and obligations under such federal, state or local laws prohibiting discrimination. By regulation, the Secretary has delegated to the Assistant Secretary for FHEO the authority to administer the Fair Housing Initiatives Program (24 CFR 125.104(a)). On December 17, 2007 (72 FR 71425), the Assistant Secretary for FHEO redelegated certain authority under the FHIP. Through this notice, the Assistant Secretary for FHEO supersedes all previous redelegations under FHIP within the Office of Fair Housing and Equal Opportunity, and retains and, with noted exception, redelegates authority to certain headquarters staff.

Accordingly, the Assistant Secretary for FHEO and the General Deputy Assistant Secretary for FHEO redelegate authority as follows:

Section A. Authority Redelegated

The Assistant Secretary for FHEO retains and, with certain exceptions, noted in Section B, redelegates to the General Deputy Assistant Secretary for FHEO the authority to act under Section 561 of the Housing and Community Development Act of 1987 (Pub. L. 100–242, February 5, 1988). This includes authority to further redelegate this authority.

The General Deputy Assistant Secretary, in turn retains and with exceptions noted in Section B herein redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs, and the Director of the Office of Programs.

Section B. Authority Excepted

The authority redelegated by the Assistant Secretary for FHEO does not include the authority to issue or waive regulations, including authority to

waive portions of the FHIP regulation pursuant to 24 CFR 125.106.

The authority redelegated in this notice by the General Deputy Assistant Secretary for FHEO, does not include the authority to determine the appropriate reporting and record maintenance, as provided in 24 CFR 125.104(e).

Section C. Authority Superseded

All prior redelegations of authority made within the Office of the Assistant Secretary for FHEO regarding Section 561 of the Housing and Community Development Act of 1987, the Fair Housing Initiatives Program, are superseded.

Section D. Authority to Redelegate

The Deputy Assistant Secretary for Enforcement and Programs and to the Director of the Office of Programs may not redelegate the authority provided in Section A of this notice.

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 16, 2011.

John Trasviña,

Assistant Secretary for Fair Housing and Equal Opportunity.

Bryan Greene,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2011–30763 Filed 11–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5544–D–09]

Redelegation of Authority Under Section 3 of the Housing and Urban Development Act of 1968

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: Pursuant to 24 CFR 135.7, the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) has been delegated authority under Section 3 of the Housing and Urban Development Act of 1968 and HUD's implementing regulations at 24 CFR part 135. In this notice, the Assistant Secretary for FHEO retains those authorities and, with noted exceptions, redelegates this authority to the General Deputy Assistant Secretary for FHEO, who further redelegates certain authority to the Deputy Assistant Secretary for Enforcement and Programs and to each of the FHEO Regional Directors. This notice also supersedes all prior redelegations of authority by the office of the Assistant Secretary for FHEO under section 3 of the Housing and Urban Development Act of 1968 and HUD's implementing regulations at 24 CFR 135.

DATES: *Effective Date:* November 16, 2011.

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5204, Washington, DC 20410–0001, telephone (202) 402–6322. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: By regulation, the Secretary delegated certain authority under section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), and its implementing regulations, 24 CFR 135, to the Assistant Secretary for Fair Housing and Equal Opportunity. On December 17, 2007 (72 FR 71429), the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) redelegated that authority, with certain exceptions, under section 3 of the Housing and Urban Development Act of 1968 to the General Deputy Assistant Secretary for FHEO who retained and further redelegated certain authorities to the Deputy Assistant Secretary for Enforcement and Programs. In addition, the Deputy Assistant Secretary for Enforcement and Programs retained these authorities and further redelegated limited authorities to each of the FHEO Region Directors. In this redelegation, the Assistant Secretary for FHEO supersedes all prior redelegations and redelegates the authority under section 3 as follows:

Section A. Authority Redelegated

The Assistant Secretary for FHEO retains and, with certain exceptions noted in Section B herein, redelegates to the General Deputy Assistant Secretary for FHEO all authority under section 3 of the Housing and Urban Development Act of 1968 and its implementing regulations. This redelegation includes the authority to further redelegate authority. The General Deputy Assistant Secretary in turn retains and redelegates this authority including the authority for Section 3 complaint processing, to the Deputy Assistant Secretary for Enforcement and Programs and the FHEO Regional Directors, with the exception that the authority delegated to the FHEO Regional Directors may not be further delegated.

Section B. Exception to Redelegation

The authority redelegated from the Assistant Secretary does not include the authority to issue or to waive regulations or to impose resolutions or sanctions in Section 3 complaint investigations pursuant to 24 CFR 135.76(f)(2)

Section C. Prior Redelegated Authority Superseded

All previous redelegations of authority made within the Office of the Assistant Secretary for FHEO under section 3 of the Housing and Community Development Act of 1968 are superseded.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 16, 2011.

John Trasviña,

Assistant Secretary for Fair Housing and Equal Opportunity.

Bryan Greene,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2011–30766 Filed 11–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5544–D–10]

Redelegation of Administrative Authority Under Section 504 of the Rehabilitation Act of 1973

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: In this notice, the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) supersedes all prior redelegations of authority made within the Office of the Assistant Secretary for FHEO under Section 504 of the Rehabilitation Act of 1973, and HUD's implementing regulations, and redelegates certain authority as set forth herein to the General Deputy Assistant Secretary, who in turn redelegates certain authority as set forth herein to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement, Director of the Office of Systemic Investigations and the FHEO Region Directors.

DATES: *Effective Date:* November 16, 2011

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5204, Washington, DC 20410–0001, telephone (202) 402–6322. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: The Secretary has delegated to the Assistant Secretary for FHEO the authority to act as ''responsible civil rights official'' and ''reviewing civil rights official'' under section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations in 24 CFR part 8. The Assistant Secretary for FHEO redelegated the authority to act as the ''responsible civil rights official'' to the General Deputy Assistant Secretary for FHEO, who in turn, redelegated that authority to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement, Director of the Office of Systemic Investigations, and the FHEO Region Directors. The Assistant Secretary for FHEO also redelegated the authority to act as ''reviewing civil rights official,'' in accordance with 24 CFR 8.56(h), to the General Deputy Assistant Secretary for FHEO, who in turn further redelegated that authority to the Deputy Assistant Secretary for Enforcement and Programs, the Director of the Office of Enforcement, and the Director of the Office of Systemic Investigations. The Assistant Secretary for FHEO therefore now supersedes those prior redelegations and retains and redelegates authority as follows:

Section A. Authority Redelegated

The Assistant Secretary for FHEO retains and, with limited exceptions set forth in Section B, redelegates the authority to act as the ''responsible civil rights official'' and the ''reviewing civil rights official'' to the General Deputy Assistant Secretary for FHEO, including the authority to redelegate that authority. The General Deputy Assistant Secretary for FHEO retains and further redelegates the authority to act as the ''responsible civil rights official'' to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Systemic Investigations, Director of the Office of Enforcement and the FHEO Region Directors. The General Deputy Assistant Secretary for FHEO retains and further redelegates the authority to act as ''reviewing civil rights official,'' in accordance with in 24 CFR 8.56(h), to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement and the Director of the Office of Systemic Investigation. The authority redelegated to the General Deputy Assistant Secretary for FHEO to act as the ''responsible civil rights official'' when undertaking procedures to effect compliance pursuant to 24 CFR 8.57 is only redelegated to the Deputy Assistant Secretary for Enforcement and Programs and may not be redelegated.

Section B. Authority Excepted

The authority redelegated from the Assistant Secretary for FHEO does not include the authority to issue or waive regulations. The authority redelegated from the Assistant Secretary for FHEO to the General Deputy Assistant Secretary for FHEO does not include the authority to further redelegate.

Section C. Authority Superseded

All prior redelegations of authority made within the office of the Assistant Secretary for FHEO under section 504 of the Rehabilitation Act of 1973 are superseded.

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: November 16, 2011.

John Trasviña,

Assistant Secretary for Fair Housing and Equal Opportunity.

Bryan Greene,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2011–30768 Filed 11–28–11; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5544–D–11]

Redelegation of Fair Housing Act Complaint Processing Authority

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: Through this notice, the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO) supersedes all prior redelegations of authority for Fair Housing Act complaint processing made within the Offices of the Assistant Secretary for FHEO and the General Deputy Assistant Secretary for FHEO under the Fair Housing Act and redelegates this authority to FHEO region and headquarters staff.

DATES: *Effective Date:* November 16, 2011.

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Deputy Assistant Secretary for Enforcement and Programs, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street SW., Room 5204, Washington, DC 20410–0001, telephone (202) 402–6322. (This is not a toll-free number.) Hearing- and speech-impaired individuals may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: By separate notice published in today's **Federal Register,** the Secretary delegates to the Assistant Secretary for FHEO authority pertaining to civil rights statutes. Included in the consolidated delegation is the authority to enforce the Fair Housing Act (42 U.S.C. 3601, *et seq.*). In this notice, the Assistant Secretary for FHEO supersedes all prior redelegations of authority for Fair Housing Act complaint processing and retains and redelegates this authority to the General Deputy Assistant Secretary, who redelegates this authority to FHEO region and headquarters staff. Accordingly, the Assistant Secretary for FHEO retains and redelegates this authority as provided in this notice.

Section A. Authority Retained and Redelegated

The Assistant Secretary for FHEO retains and redelegates the authority for Fair Housing Act complaint processing, as provided in 24 CFR part 103, to the General Deputy Assistant Secretary for FHEO.

The General Deputy Assistant Secretary for FHEO retains and further redelegates the authority for the filing of a Secretary-initiated complaint and/or initiation of complaint and pre-complaint investigations under 24 CFR 103.204(a), 24 CFR 103.200(b), to the Deputy Assistant Secretary for Enforcement and Programs.

The General Deputy Assistant Secretary for FHEO retains and further redelegates the authority under 24 CFR part 103, subparts A, B, D (with the exception of the filing of a Secretary-initiated complaint and/or investigation under 24 CFR 103.200(b) and 24 CFR 103.204(a)), E, and F, to the Deputy Assistant Secretary for Enforcement and Programs; Director of the Office of Enforcement; Director of the Office of Systemic Investigations and FHEO Region Directors.

The General Deputy Assistant Secretary for FHEO retains and further redelegates the authority under 24 CFR part 103, subpart C (referral of complaints to State and Local Agencies) to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement and FHEO Region Directors.

The General Deputy Assistant Secretary for FHEO further retains and redelegates the authority under 24 CFR 103.510(a) to the Deputy Assistant Secretary for Enforcement and Programs, Director of the Office of Enforcement and FHEO Region Directors.

The General Deputy Assistant Secretary for FHEO further retains and redelegates the authority under 24 CFR 103.510(d) to the Deputy Assistant Secretary for Enforcement and Programs; Director of the Office of Enforcement; Director of the Office of Systemic Investigations; FHEO Region Directors and FHEO Center Directors.

The Assistant Secretary for FHEO retains and redelegates to the General Deputy Assistant Secretary for FHEO the authority to reconsider no cause determinations. The General Deputy Assistant Secretary for FHEO further retains and redelegates this authority to the Deputy Assistant Secretary for Enforcement and Programs and Director of the Office of Enforcement.

Section B. Authority To Further Redelegate

The General Deputy Assistant Secretary may further redelegate the authorities provided in Section A of this notice. The Deputy Assistant Secretary for Enforcement and Programs; Director of the Office of Enforcement; Director of the Office of Systemic Investigations; FHEO Region Directors and FHEO Center Directors may not redelegate the authorities provided in Section A of this notice.

Section C. Authority Superseded

All prior redelegations of authority for Fair Housing complaint processing made within the Offices of the Assistant Secretary for FHEO and the General Deputy Assistant Secretary are superseded.

Authority: Section 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 16, 2011.

John Trasviña,

Assistant Secretary for Fair Housing and Equal Opportunity.

Bryan Greene,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 2011–30769 Filed 11–28–11; 8:45 am]

BILLING CODE 4210–67–P

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Federal Register

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Tuesday, November 29, 2011

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